

## Underground Storage Tank Policy Commission Update

October, 2009

### ADEQ Updates

- **Department Reorganization:** Director Ben Grumbles announced that the Tank Programs Division and the Waste Programs Divisions have been reorganized and combined – a move intended to streamline the department and save money in light of current and future budget challenges.

Former TPD Director Mike Fulton will now report to WPD Director Amanda Stone as her deputy but will continue to directly oversee UST Corrective Actions and State Assurance Fund programs. UST and LUST inspections and compliance functions will be combined with WPD in order to centralize those important functions.

Mike Fulton will continue to serve as the department representative on the UST Policy Commission. Joe Drosendahl, Tara Rosie and Ron Kern will continue to report directly to Mike. For most ongoing transactions, this reorganization should be transparent to the regulated community.

- **ADEQ's 15% Budget Reduction Plan:** ADEQ and all other state agencies were instructed by the Governor's Office of Strategic Planning and Budgeting to draft reports identifying the impacts of a 15% permanent expenditure reduction. See the Office of Strategic Planning and Budgeting instructions at:

<http://www.ospb.state.az.us/BudgetReports.asp>

For ADEQ, this would equate to an additional \$15.4M in expenditure reductions department wide for FY10, over and above those already mandated through legislation - IF the plan is enacted as drafted. Due to the size of earlier transfers from ADEQ funds to address the general fund deficit, there are no "painless" alternatives remaining to meet this expenditure reduction target. See ADEQ's draft plan at:

<http://www.ospb.state.az.us/documents/BudgetReports/EVA.pdf>

ADEQ is proposing an approximate \$9M reduction in UST Fund expenditures under this draft plan. IF enacted, such expenditure reductions may require the department to declare a ranking period for State Assurance Fund claims. While the draft reports are under consideration, ADEQ will continue to process claims and reimbursements for eligible costs. If claims ranking is required, the notification and ranking process will be followed as described in A.A.C. R18-12-612 through 615.

- **Risk Assessment Workshop:** We are developing an outline for a workshop intended to further inform the regulated community of how risk assessments can be applied in support of closure decisions at LUST sites. We are targeting a workshop for mid November, 2009 and will schedule additional workshops if demand warrants. An announcement will be distributed soon.
- See Attached Corrective Action Section Report: Aug. 2009 vs. Sept. 2009
  - we have reduced the number of documents under review for greater than 30 days by half (8 vs. 4);
  - we have reduced the number of documents under review for greater than 120 days from 5 to 3.
- See Attached State Assurance Fund Report
  - No trend changes of note from Aug. 2009 to Sept. 2009.

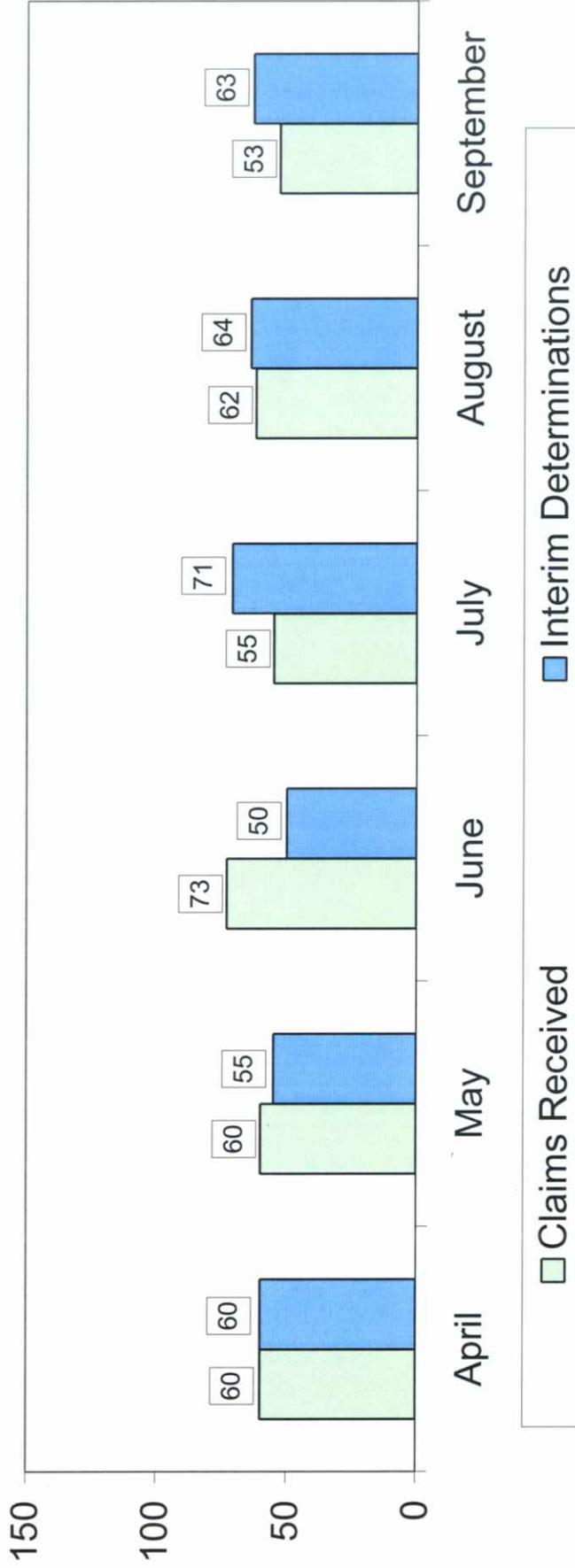
#### State Assurance Fund Status

- See attached “State Assurance Fund Status; Updated September 30, 2009”
- For the month closing September 30, 2009, projected ending balance of \$3,965,300. No change from prior month report.
- Will be negatively impacted if the 15% Budget Reduction Plan is enacted (see ADEQ Updates above).

#### Discussion of Recent Legislation and Rules Affecting the UST Program

- Continuation of the Governor’s Regulatory Review Plan: The rule moratorium that has been in effect since January 22, 2009 has been extended to November 24, 2009 by the Governor’s office. See attached memorandum.
- Thereafter the rule moratorium is extended through June 30, 2010 by virtue of Laws 2009, Third Special Session, Ch.7, §28. See attached session law.

# State Assurance Fund September 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	14	17	34	0	0	0	34
Pre Approval	0	2	0	0	0	0	0
Reimbursement	39	44	88	1*	0	0	89
<b>Totals</b>	<b>53</b>	<b>63</b>	<b>122</b>	<b>1*</b>	<b>0</b>	<b>0</b>	<b>123</b>

1\* represents claim created during the appeals process on a direct payment request (and given submittal date of associated direct payment request). Actual claim is less than 90 days under review.

## State Assurance Fund Work in Process Summary September 2009

<b>Administrative Review</b>				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	19	0	0	0
Reimbursement	42	0	0	0

<b>Technical Review</b>				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	15	0	0	0
Reimbursement	46	0	0	0

<b>Payment Processing</b>				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Reimbursement	0	1*	0	0

<b>Summary</b>				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	34			
Reimbursement	88	1*	0	0
<b>Total</b>	<b>122</b>	<b>1*</b>		

1\* represents claim created during the appeals process on a direct payment request (and given submittal date of associated direct payment request). Actual claim is less than 90 days under review.

State Assurance Fund  
September 2009

**Informal Appeal Requests Received**

July	August	September
10	12	14

**Informal Appeal Determinations**

July	August	September
17	18	9

**Formal Appeal Requests Received**

July	August	September
4	0	7

**Formal Appeal Determinations**

July	August	September
3	4	5

No Hearings were conducted in September.

### 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.

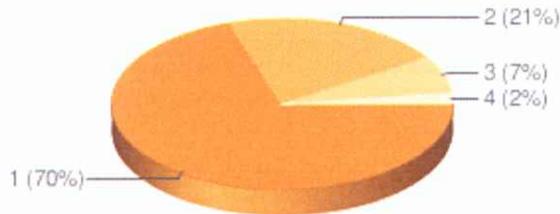
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
 Tank Programs Division  
**Corrective Action Section**

# UST POLICY COMMISSION REPORT

## Leaking UST (LUST) Statistics

LUST STATISTIC	JUNE 2009	JULY 2009	AUGUST 2009	SEPTEMBER 2009
Monthly reported	2	7	3	1
Monthly closed	12	8	40	9
Cumulative reported	8,512	8,519	8,522	8,523
Cumulative closed	7,494 (88%)	7,505 (88%)	7,547 (89%)	7,557 (89%)
Cumulative open	1,018 (12%)	1,014 (12%)	975 (11%)	966 (11%)

### Status of Open LUST Cases



[Status: 1 = groundwater impact, 2 = uncharacterized, 3 = soil only, 4 = potential closure]

### Corrective Action Documents Pending Review

DOCUMENT TYPE	JUNE 2009	JULY 2009	AUGUST 2009	SEPTEMBER 2009
Site Characterization Rpt (SCR)	2	3	5	3
Revised SCR	1	1	2	1
Corrective Action Plan (CAP)	2	1	0	0
CAP Modification	2	1	2	2
Risk Assessment	6	6	3	2
LUST Case Closure Request	10	8	9	7
SAF Pre-Approval Work Plan	16	1	0	0
<b>Total</b>	<b>39</b>	<b>15</b>	<b>21</b>	<b>15</b>

### Document Review Timeframes

Document	Received September 2009	Decisions September 2009	Pending < 30 Days	Pending > 30 Days	Pending >60 Days	Pending > 90 Days	Pending > 120 Days	Total Number of Active Reviews
Site Characterization Report	2	2	2	1				3
Revised SCR	1	1	1					1
Corrective Action Plan								
CAP mod request	1		1				1	2
Risk assessment	1	2	1				1	2
LUST case closure request	1	3	1	3	2		1	7
<b>TOTAL:</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>4</b>	<b>2</b>		<b>3</b>	<b>15</b>

### Other Activities

Route 66 Initiative  
 State Lead Program

School Assistance Initiative  
 ARRA funding

MNA Program implementation  
 Municipal Tank Closure Program (MTCP)

State Assurance Fund Status  
FY 2010  
Updated: September 30, 2009

a.) Sources

Beginning Balance (July 1, 2009)	\$19,969,700
Projected Revenue	<u>\$28,882,400</u> <sup>(1)</sup>
Projected Total Available Funds	\$48,852,100

b.) Uses

Projected Expenditures	\$29,703,900
FY2010 Estimated Transfers	<u>\$15,182,900</u> <sup>(2)</sup>
Total Uses	\$44,886,800

c.) Summary

Projected Total Available Funds	\$48,852,100
Total Uses	<u>-\$44,886,800</u>
Projected Ending Balance	\$3,965,300

NOTES:

- (1) Revenue (taxes, cost recovery, and interest) may vary depending on fuel demand and current cash balances.
- (2) Source: Laws 2009, 49th Legislature, 1st Regular Session, Chapter 12, HB 2643.



SECRETARY OF STATE  
FILED

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State of Arizona

Janice K. Brewer  
Governor

Office of the Governor  
1700 West Washington Street, Phoenix, AZ 85007

Main Phone: 602-542-4331  
Facsimile: 602-542-7601

TO: State Agency Directors and Acting Directors

FROM: Janice K. Brewer  
Governor

SUBJECT: Continuation of Regulatory Review Plan (Moratorium)

DATE: October 16, 2009

I am continuing the rulemaking moratorium issued January 22, 2009, which was extended to April 30, 2009 and October 16, 2009 to November 24, 2009. The memoranda of January 22, 2009, April 29, 2009, and June 29, 2009 detailing the moratorium shall remain in effect until that date.

Until November 24, 2009, agencies shall submit any requests for exceptions to the rulemaking moratorium in writing for rulemakings that impact critical public peace, health and safety functions of the agency, that address the state budget deficit, implement the ARRA, *or that are deregulatory*. The Governor's Office will review any such notification and determine whether exception is appropriate under the circumstances.

As stated in the previous moratorium of January 22, 2009 and the extensions dated April 29, 2009 and June 29, 2009, independent agencies are encouraged to participate voluntarily within the context of their own rulemaking processes.

Communications regarding exceptions to the moratorium, or questions regarding the moratorium generally, should be addressed to Richard Bark, Deputy Chief of Staff, Policy at [rbark@az.gov](mailto:rbark@az.gov)

From and after November 24, 2009, Laws 2009, Third Special Session, Ch. 7, § 28 is in effect regarding the legislative rulemaking moratorium.

This memorandum shall be published in the *Arizona Administrative Register*.

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House Engrossed  
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State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Third Special Session  
2009  
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CHAPTER 7  
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HOUSE BILL 2008  
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AN ACT

AMENDING SECTION 1-501, ARIZONA REVISED STATUTES; AMENDING TITLE 1, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 1-502; AMENDING SECTION 4-115, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-120; AMENDING SECTION 9-463.05, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 7, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-805; AMENDING SECTION 11-356, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, CHAPTER 45, SECTION 3; AMENDING SECTIONS 11-1102, 20-1550, 32-516, 32-702, 32-703, 32-730, 32-1606, 32-3233 AND 33-809, ARIZONA REVISED STATUTES; AMENDING SECTION 33-814, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, CHAPTER 68, SECTION 1; AMENDING SECTIONS 33-1322, 36-3291, 41-764 AND 48-6203, ARIZONA REVISED STATUTES; AMENDING LAWS 2007, CHAPTER 260, SECTION 6, AS AMENDED BY LAWS 2008, CHAPTER 291, SECTION 7; REPEALING LAWS 2008, CHAPTER 289, SECTION 2; MAKING APPROPRIATIONS; RELATING TO GENERAL GOVERNMENT BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Sec. 28. Moratorium on rule making relating to increased monetary or regulatory costs; exceptions; definitions

A. Notwithstanding any other law, for fiscal year 2009-2010, an agency shall not conduct any rule making, including an informal rule making process, that would impose increased monetary or regulatory costs on other state agencies, political subdivisions of this state, persons or individuals or would not reduce the regulatory burden on the persons or individuals so regulated.

B. Subsection A of this section does not apply to rule making for any of the following:

1. An authorization or requirement enacted by the legislature after January 1, 2009 or as authorized by the governor after January 22, 2009.
2. To avoid a violation of a court order or federal law that would result in sanctions by the court or federal government to an agency in fiscal year 2009-2010 for failure to conduct the rule making action.
3. To prevent a threat to the public health, peace or safety.
4. To fulfill an obligation related to fees, rates, fines or regulations that are expressly delineated in the constitution of this state.
5. To implement or comply with the fiscal year 2009-2010 state budget or the American recovery and reinvestment act of 2009 (P.L. 111-5).
6. A rule or other item that is exempt from title 41, chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
7. To eliminate or replace archaic or illegal rules.

C. An agency shall not conduct any informal or formal rule making pursuant to this section without the prior written approval of the office of the governor. This subsection does not apply to any agency that is independent of the office of the governor, including any agency that is headed by a single elected official or the corporation commission.

D. For the purposes of this section, "agency", "person", "rule" and "rule making" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

Sec. 29. Federal stimulus funding; reporting; retroactivity

A. All agencies receiving monies from the federal American recovery and reinvestment act (P.L. 111-5) in either fiscal year 2008-2009 or 2009-2010 shall provide a report on the agency's use of the monies to the joint legislative budget committee by October 1, 2009.

B. The reports shall include the amount of monies received by each federal grant, the amount of monies received for the same programs from sources other than Public Law 111-5, the purpose of receiving the additional monies from Public Law 111-5, how the monies were spent, any distributions made by the agency listed by subrecipient, if any, the number of personnel funded by the monies and whether they were existing personnel and the extent to which the monies offset other budget reductions.

C. An agency may meet the requirements of subsection A by notifying the joint legislative budget committee that its report has been posted to the governor's office of economic recovery website, if the information provided through the website meets all of the requirements of subsection B.

D. This section is effective retroactively to from and after September 30, 2009.

Sec. 30. Calculation adjustments; fiscal year 2009-2010 closing state general fund balance

Notwithstanding any other law, for purposes of calculating the state general fund balance at the close of fiscal year 2009-2010, any monies appropriated from the state general fund that are exempted from lapsing pursuant to section 35-190, Arizona Revised Statutes, and that remain unexpended and unencumbered at the close of fiscal year 2009-2010 shall be included in the closing balance as if the appropriations had lapsed or otherwise reverted to the state general fund.

Sec. 31. Unrestricted federal monies; retroactivity

A. Any unrestricted federal monies, excluding monies from the federal American recovery and reinvestment act (P.L. 111-5), received from July 1, 2009 through June 30, 2010 shall be deposited in the state general fund. The monies shall be used for the payment of essential governmental services.

B. This section is effective retroactively to from and after June 30, 2009.

Sec. 32. Required reduction in hours

An agency director may require agency covered employees to work reduced hours in order to comply with any reduction in appropriations for personnel expenses and related benefit costs for fiscal year 2009-2010. The director of the department of administration shall prescribe procedures to implement these reductions. The director of the department of administration is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purposes of prescribing these procedures.

Sec. 33. Notice filing fees; securities regulatory and enforcement fund; transfer

A. Notwithstanding section 44-3324, subsection H, paragraph 1, Arizona Revised Statutes, for fiscal year 2009-2010, eighty per cent of the monies collected pursuant to section 44-3324, Arizona Revised Statutes, shall be deposited in the securities regulatory and enforcement fund established by section 44-2039, Arizona Revised Statutes.

B. On February 1, 2010 and June 30, 2010, monies deposited in the securities regulatory and enforcement fund pursuant to subsection A of this section are transferred to the state general fund.

Sec. 34. Wireless equipment; reporting

A. On or before January 31, 2010, all state agencies, including universities and community colleges, shall report on their use of wireless telephones and any other mobile voice or data communications services in the first half of the fiscal year, regardless of fund source, to the joint committee on capital review.

B. The report shall include the number of devices in service, the number of devices purchased and the associated service expenditures by fund source and shall indicate what resources were used by employees in health and safety positions.