

Underground Storage Tank Policy Commission Update

November, 2009

UST Policy Commission Letter in response ADEQ's September 1, 2009 Report

On November 11, 2009, the UST Policy Commission sent a letter to the Governor, President of the Senate, Speaker of the House and ADEQ Director in response to ADEQ's "Underground Storage Tank Assurance Account Liabilities Report" (attached).

"The Commission recommends consideration of extension of the current excise tax which is to be sunset on December 31, 2013, or alternative funding mechanisms to ensure the Assurance Fund can meet its ongoing financial obligations."

ADEQ Updates

- **REPEAT FROM OCTOBER, 2009 REPORT - 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:** On November 12, 2009, a three hour workshop was held as a community outreach service for environmental consultants conducting corrective actions at Leaking Underground Storage Tank sites. There were 28 environmental consultants that attended the workshop. The workshop focused on delineating the differences in data quality objectives between classical

site characterization and risk assessment. Specific attention was given to timing of data acquisition, data support requirements, and feeding of both risk characterization and fate and transport modeling. Numerous handouts were provided to assist consultants in the decision-making steps encountered in the tiered risk-based process as described in A.A.C. R18-12-263.01. These handouts will be made available through the ADEQ web site.

- See Attached Corrective Action Section Report: Aug. 2009 vs. Sept. 2009
 - we are making substantial progress toward meeting a 30 day review timeframe for corrective action documents.
 - we have reduced the number of documents under review for greater than 120 days from 3 to 1.

- See Attached American Recovery and Reinvestment Act (ARRA) of 2009
 - As of October 31, 2009, ADEQ has obligated 74% (or \$2.3M) of the \$3.2M awarded under ARRA. The total expenditures to date (4% of the total awarded) reflect the lag time between completion of work, invoicing and payment.
 - Of the 24 sites currently under contract, cleanup has been initiated at 13 sites and has been completed at 2 sites.
 - Further information regarding ADEQ's ARRA funding can be found at:

<http://www.azdeq.gov/recovery/index.html>

- See Attached State Assurance Fund October 2009 Report
 - We received an increased number of claims in October (81) vs. September (53).
 - No claims are pending more than 90 days.

State Assurance Fund Status

- See attached "State Assurance Fund Status; Updated October 31, 2009"
- For the month closing October 31, 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.
- Thereafter the rule moratorium is extended through June 30, 2010 by virtue of Laws 2009, Third Special Session, Ch.7, §28.

ARIZONA UNDERGROUND STORAGE TANK POLICY COMMISSION

November 11, 2009

The Honorable Kirk Adams
Speaker of the Arizona House of Representatives
1700 West Washington Street, Room 221
Phoenix, Arizona 85007

The Honorable Robert Burns
Senate President
Arizona State Senate
1700 West Washington Street, Room 204
Phoenix, Arizona 85007

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

Mr. Benjamin H. Grumbles, Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

Re: Arizona Underground Storage Tank Policy Commission
Recommendations on Proposed 2008 UST Compliance Act

Dear Speaker Adams, President Burns, Governor Hull and Director Grumbles:

This letter is written on behalf of the Arizona Underground Storage Tank (UST) Policy Commission (Commission) which is statutorily mandated with making recommendations on Arizona's UST Program to the Speaker of the House, Senate President, Governor, and Director of the Arizona Department of Environmental Quality (Arizona Revised Statutes, Section 49-1092). The Arizona Department of Environmental Quality published its legislatively-mandate report, "Underground Storage Tank Assurance Account Liabilities Report" on September 1, 2009. The following comments regarding this Report are based on unanimous decisions by the voting members of the Commission at the September 23, 2009 Commission meeting.

The Commission recognizes the herculean task of ensuring a balanced state budget during these challenging economic times. It is in this context that the Commission expresses its concern about the short and long term financial capability of the Assurance Fund to meet its current and future financial obligations. Specifically, The Commission does not support additional transfers out of the Assurance Fund for fiscal year 2010, but if additional transfers are necessary the Commission recommends that those transfers be coordinated on a quarterly or end of year schedule to ensure existing obligations are met.

ARIZONA UNDERGROUND STORAGE TANK POLICY COMMISSION

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Letter

Because of past and proposed transfers out of the Assurance Fund, it is obvious that the Assurance Fund will not be able to meet its future obligations. These obligations include, but are not limited to:

- continued state management of the UST program which is much preferable to federal oversight,
- state-lead cleanup of orphan sites which greatly enhances development potential in areas throughout the state, and
- long term monitoring of groundwater conditions in areas with low concentration but ubiquitous petroleum contamination that may pose challenges for municipal, industrial and irrigation water supplies.

The Commission recommends consideration of extension of the current excise tax which is to be sunset in December 31, 2013, or alternative funding mechanisms to ensure the Assurance Fund can meet its ongoing financial obligations. The Commission emphasizes that extension of the excise tax is not a new tax, but extension of an existing funding mechanism to meet obligations incurred or to be incurred by the state.

If you have any questions, please contact me (928-282-3630). Thank you for your consideration of our recommendations.

Sincerely,



Gail M. Clement, Chairperson
Underground Storage Tank Policy Commission

cc. Underground Storage Tank Policy Commission

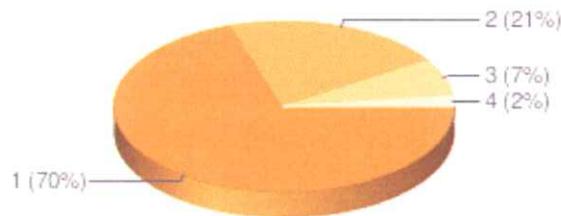
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
Waste Programs Division
Corrective Action Section

UST POLICY COMMISSION REPORT

Leaking UST (LUST) Statistics

LUST STATISTIC	JULY 2009	AUGUST 2009	SEPTEMBER 2009	OCTOBER 2009
Monthly reported	7	3	1	2
Monthly closed	8	40	9	6
Cumulative reported	8,519	8,522	8,523	8,525
Cumulative closed	7,505 (88%)	7,547 (89%)	7,557 (89%)	7,563 (89%)
Cumulative open	1,014 (12%)	975 (11%)	966 (11%)	962 (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	AUGUST 2009	SEPTEMBER 2009	OCTOBER 2009	NOVEMBER 2009*
Site Characterization Rpt (SCR)	5	3	1	0
Revised SCR	2	1	0	0
Corrective Action Plan (CAP)	0	0	1	2
CAP Modification	2	2	3	1
Risk Assessment	3	2	1	0
LUST Case Closure Request	9	7	6	5
SAF Pre-Approval Work Plan	0	0	0	0
Total	21	15	12	8

Document Review Timeframes *

Document	Pending < 30 Days	Pending > 30 Days	Pending > 60 Days	Pending > 90 Days	Pending > 120 Days	Total Number of Active Reviews
Site Characterization Report						
Revised SCR						
Corrective Action Plan	1	1				2
CAP mod request					1	1
Risk assessment						
LUST case closure request		5				5
TOTAL:	1	6			1	8

[Pending > 120 days: CAP mod request: Sky Harbor LUST to be put out for public notice.]

* Note: based on document review status as of 11/18/2009

American Recovery & Reinvestment Act of 2009 (ARRA)

Status	OCTOBER 2009
Total ARRA funding	\$3,219,000
Money obligated	\$2,301,000 (74%)
Money spent	\$144,000 (4%)
Total ARRA sites	24
Site assessment initiated	4
Site assessment completed	5
Clean-up initiated	13
Clean-up completed	2

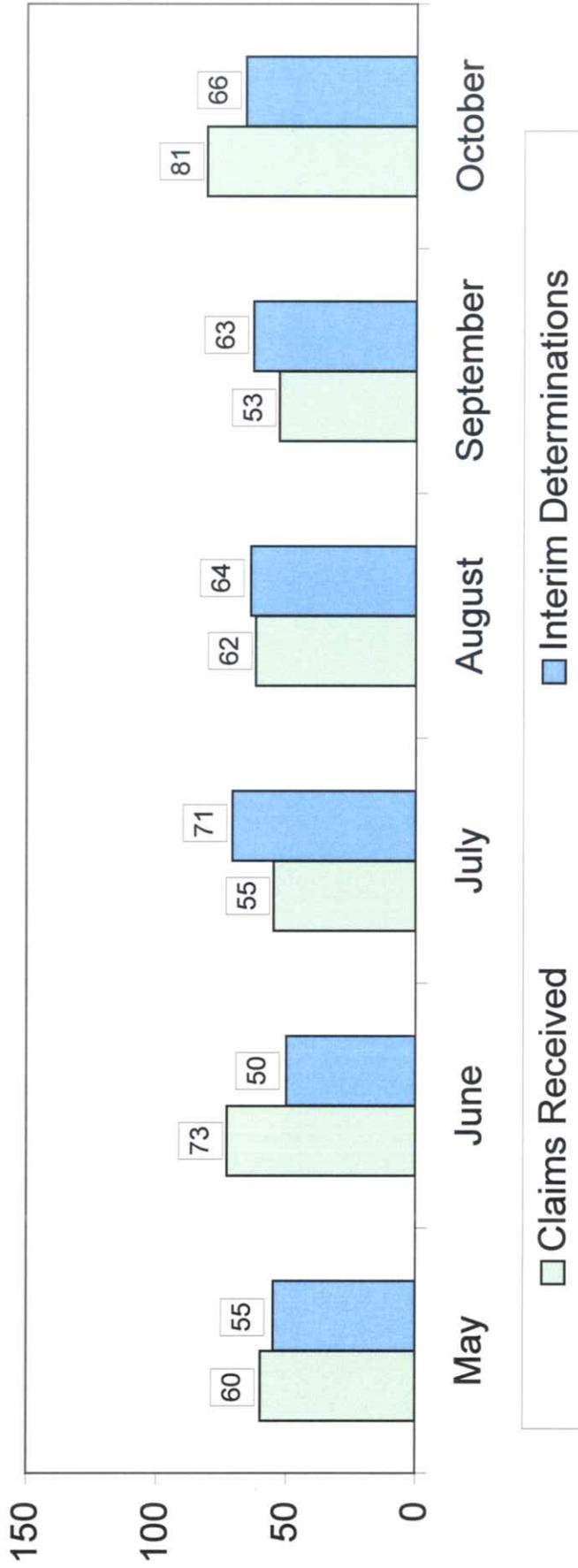
Other Activities

Route 66 Initiative
State Lead Program

School Assistance Initiative
MNA Program implementation

Municipal Tank Closure Program (MTCP)

State Assurance Fund October 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	24	15	51	0	0	0	51
Pre Approval	0	0	0	0	0	0	0
Reimbursement	57	51	106	0	0	0	106
Totals	81	66	157	0	0	0	157

State Assurance Fund Work in Process Summary
October 2009

Administrative Review				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	37	0	0	0
Reimbursement	59	0	0	0

Technical Review				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	13	0	0	0
Reimbursement	43	0	0	0

Payment Processing				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	1	0	0	0
Reimbursement	4	0	0	0

Summary				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	51	0	0	0
Reimbursement	106	0	0	0
Total	157	0	0	0

State Assurance Fund

October 2009

Informal Appeal Requests Received

August	September	October
12	14	21

Informal Appeal Determinations

August	September	October
18	9	18

Formal Appeal Requests Received

August	September	October
0	7	0

Formal Appeal Determinations

August	September	October
4	5	1

No Hearings were conducted in October.

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.

State Assurance Fund Status
 FY 2010
 Updated: October 31, 2009

a.) Sources

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

b.) Uses

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

c.) Summary

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

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.