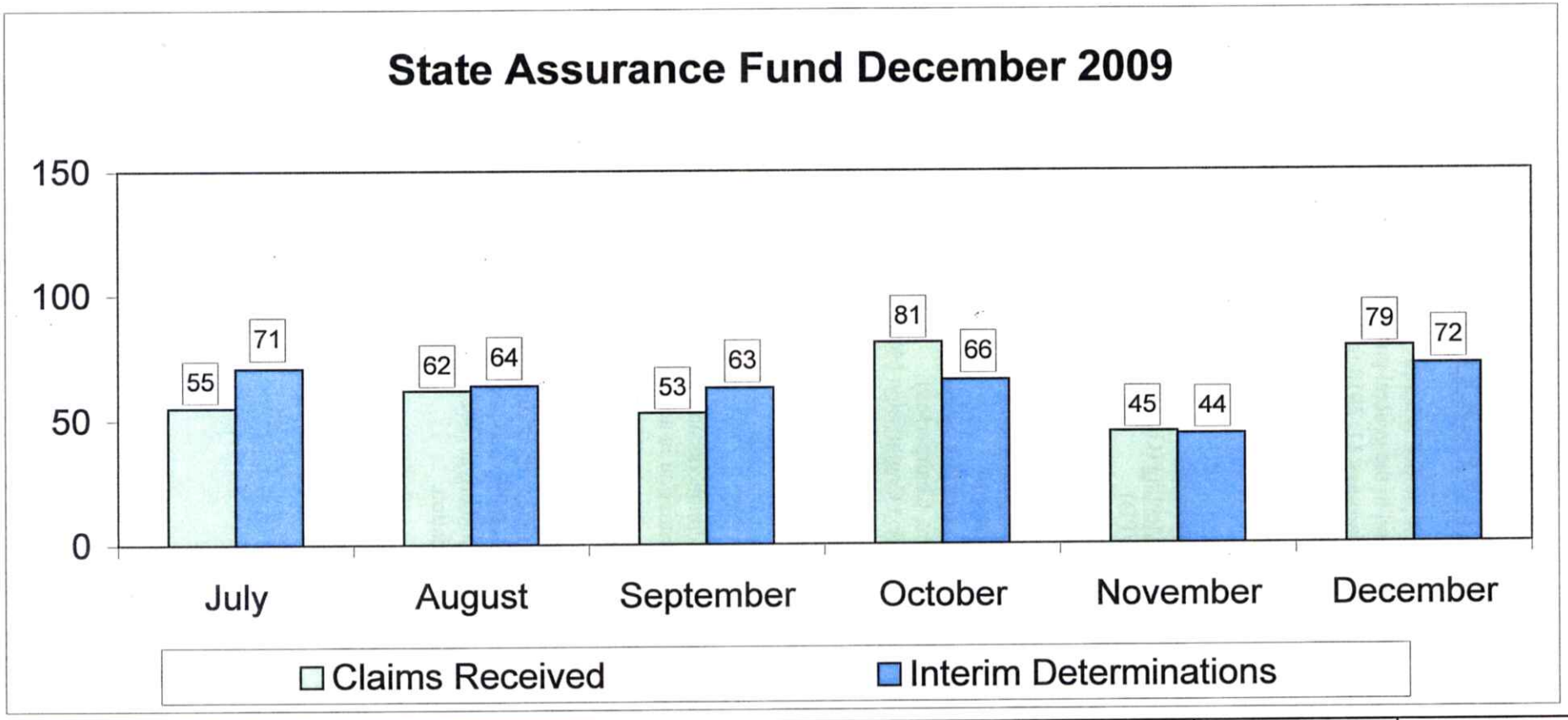
NOTICE OF MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Pursuant to Arizona Revised Statutes (A.R.S.) § 38-431.02, notice is hereby given to the members of the Underground Storage Tank (UST) Policy Commission and to the general public that the **UST Policy Commission** will hold a meeting open to the public on **January 11, 2010** from 9:00 a.m. until noon, at ADEQ in **room 3175 A&B** located at 1110 West Washington, Phoenix, Arizona. The Commission may discuss, deliberate or vote on any item listed on the agenda. The Commission may vote to hold an executive session for consultation with its attorney for legal advice pursuant to A.R.S. § 38-431.03 (A) (3) concerning any item on the agenda.

1. Call to Order and Roll Call (Gail Clement, Chairperson)
2. Approval of Minutes from December 16, 2009 Meeting (Gail Clement, Chairperson)
3. ADEQ Updates (Mike Fulton/Amanda Stone, WPD)
4. SAF Status (Mike Fulton/Amanda Stone, WPD)
5. Evaluation Subcommittee Update (Bill Bunch, Chairperson)
   a. December 3, 2009 Subcommittee Meeting
   b. Extension of the SAF Claims Submittal Deadline for Existing SAF Eligible Releases
6. General Call to the Public (Gail Clement, Chairperson)
7. **SAF Recommendations Letter (Bill Bunch, Evaluation Subcommittee Chairperson)**
8. Summary of Meeting Action Items (Gail Clement, Chairperson)
9. Discussion of Agenda Items and Schedule for Next Commission Meeting (Gail Clement, Chairperson)
10. Announcements:
    a. Next Policy Commission meeting is scheduled to be held on January 27, 2010 at 9:00 a.m., in Room 250 at ADEQ located at 1110 W. Washington, Phoenix, AZ.
11. Adjourn

Call to the Public is for consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or rescheduling the matter for further consideration, discussion and decision at a later date.

A copy of the agenda background material provided to commission members (with exception of material relating to possible executive session) is available for public inspection at the ADEQ reception area, 1110 W. Washington Street, Phoenix, Arizona. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting June Schellenberg at (602) 771-4837. Requests should be made as early as possible to allow time to arrange the accommodation.



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	25	51	0	0	0	51
Pre Approval	0	0	0	0	0	0	0
Reimbursement	55	47	107	0	0	0	107
Totals	**79**	**72**	**158**	**0**	**0**	**0**	**158**

State Assurance Fund Work in Process Summary
December 2009

Administrative Review				
	Less than 90 days	Over 90 days	Over 180 days	Over 365 days
Direct Payment	24	0	0	0
Reimbursement	62	0	0	0

Technical Review				
Direct Payment	22	0	0	0
Reimbursement	42	0	0	0

Payment Processing				
Direct Payment	5	0	0	0
Reimbursement	2	0	0	0

Summary				
Direct Payment	51	0	0	0
Reimbursement	107	0	0	0
Total	158	0	0	0

State Assurance Fund

December 2009

Informal Appeal Requests Received

October	November	December
21	10	17

Informal Appeal Determinations

October	November	December
18	12	7

Formal Appeal Requests Received

October	November	December
0	5	11

Formal Appeal Determinations

October	November	December
1	5	1

No Hearings were conducted in December.

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
Waste Programs Division

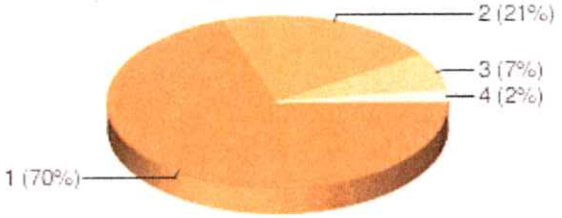
Corrective Action Section

UST POLICY COMMISSION REPORT

Leaking UST (LUST) Statistics

LUST STATISTIC	SEPTEMBER 2009	OCTOBER 2009	NOVEMBER 2009	DECEMBER 2009
Monthly reported	1	2	1	0
Monthly closed	9	6	8	8
Cumulative reported	8,523	8,525	8526	8526
Cumulative closed	7,557 (89%)	7,563 (89%)	7570 (89%)	7578 (89%)
Cumulative open	966 (11%)	962 (11%)	956 (11%)	948 (11%)
Total Facilities with Open LUSTs			473	468

Status of Open LUST Cases



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

Corrective Action Documents Pending Review

DOCUMENT TYPE	OCTOBER 2009	NOVEMBER 2009*	DECEMBER 2009	JANUARY 2010
Site Characterization Rpt (SCR)	1	0	1	3
Revised SCR	0	0	0	0
Corrective Action Plan (CAP)	1	2	2	5
CAP Modification	3	1	1	2
Risk Assessment	1	0	0	0
LUST Case Closure Request	6	5	5	9
SAF Pre-Approval Work Plan	0	0	0	0
Total	**12**	**8**	**9**	**19**

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	3					3
Revised SCR						
Corrective Action Plan	3	1	1			5
CAP mod request	1		1			2
Risk assessment						
LUST case closure request	4	4	1			9
TOTAL:	11	5	3			19

* Note: based on document review status as of 01/07/2010

American Recovery & Reinvestment Act of 2009 (ARRA)

Status	DECEMBER 2009
Total ARRA funding	$3,219,000
Money obligated	$2,418,000 (75%)
Money spent	$434,795 (14%)
Total ARRA sites	23
Site assessment initiated	8
Site assessment completed	6
Clean-up initiated	16
Clean-up completed	3

Other Activities

Route 66 Initiative

State Lead Program
MNA Program implementation

Municipal Tank Closure Program (MTCP)

CITY OF TUCSON
ENVIRONMENTAL SERVICES

Do More Blue

January 7, 2010

VIA U.S REGULAR MAIL

Underground Storage Tank Policy Commission
Attn: Gail Clement, Chairperson
G.M. Associates, Inc.
301 Baron Dr.
Sedona, AZ 86336

Re: Extension of the State Assurance Fund Program; Including Funding Source and Claims Submittal Deadline for Existing SAF Eligible Releases

Dear Ms. Clement:

In response to discussions during the December 2009 Underground Storage Tank (UST) Policy Commission meeting, the City of Tucson (City) - Environmental Services Department wishes to express support in the motion to extend the State Assurance Fund (SAF) Program beyond the current June 2010 twilight.

The City is the owner/operator of multiple closed and open leaking UST (LUST) facilities. We have been actively remediating several of these sites for years. The time frame associated with the remediation of soil, and especially groundwater can be extremely lengthy, and unpredictable.

The City supports the extension of the SAF Program as a whole; including the continuation of gasoline tax that funds the program, the extension of the deadline for submittals for existing SAF eligible releases, extension of the application window for entrance into the Monitored Natural Attenuation Program, and the extension of the time period sites can apply for SAF reimbursement when they are actively remediating a LUST site.

If you have any questions, please contact myself or Richard M. Byrd at (520) 791-5414.

Very truly yours,

Andrew H. Quigley
Director

NP/RB/mv

cc: ADEQ UST Policy Commission Members
Nancy Petersen, Deputy Director, Environmental Services
Richard Byrd, Environmental Services
USTs and ASTs File

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4004 S. PARK AVE. • P.O. BOX 27210 • TUCSON, AZ 85726-7210
(520) 791-3175 • FAX (520) 791-4155
www.cityoftucson.org

MOGOLLON
Environmental Services LLC

Jeff Trembly, RG

2905 East Flower Street
Phoenix, Arizona 85016
voice 602-778-6810 fax 602-778-6815
jeff@mogollonenv.com

January 7, 2010

Transmitted via e-mail – No hardcopy to follow

Ms. Gail Clement
UST Policy Commission Chairperson
G.M. Clement and Associates, Inc.
301 Baron Drive
Sedona, AZ 86336

Re: Extension of the SAF Claims Submittal Deadline for Existing SAF Eligible Releases

Dear Ms. Clement:

I am writing to provide my thoughts regarding the proposed extension of the SAF claims submittal deadline (currently June 30, 2010) for existing SAF eligible releases. I am very strongly opposed to an extension for all currently opened SAF eligible releases. I do not believe that in these times of financial stress the Commission or the Department should be endorsing a taxpayer funded bail-out for owners and operators who cared so little about the environment that they failed to comply with the program's obligations when they had more than a decade (in most cases) to do so and hundreds of thousands of taxpayer dollars at their disposal. Those owners and operators who "dawdled" made a poor business decision and deserve to go bankrupt if that is what it comes to. That is the way our capitalist system is supposed to work.

That said, I can see where there may be a few cases where an owner/operator made a continuous, good-faith effort to get the job done and failed due to technical or administrative complications. Such parties should be able to apply to the Department for an SAF extension on a release-by-release basis. All such applicants should be required to enter into an administrative Consent Order as part of their application. This requirement will allow the Department to: 1) Focus their energies on the site issues if the Department finds the applicant deserves an extension; and 2) Get the owner/operator onto a tight schedule if the Department finds that he has not been making a continuous, good-faith effort and therefore does not deserve the extension. The Consent Order requirement will also limit the number of extension applications to the Department since those who knowingly "dawdled" will go back into hiding.

The Department's determination should be appealable as are most SAF decisions. I believe the Department could issue some easy guidance as to their decision making process. For instance, if at any time an owner/operator failed to take any significant corrective actions in response to a release for a period of two years or more (e.g., site had soil contamination with an undefined extent and no drilling was done for four years)

then that party did not make a "continuous, good-faith effort" and does not get an extension.

I believe that no volunteers should be eligible for extensions. Volunteers willingly took on their obligations knowing the deadlines and if they failed to take full advantage of the program, than too bad. Volunteers have no legal obligation to complete corrective actions so I see no reason these sites cannot just convert to State Lead.

Arizona faces the greatest financial challenges of its history. Taxpayer dollars are stretched far past the breaking point and should not be used to bail-out those who did not make an adequate effort to comply with a program created to protect our health and environment.

Respectfully submitted,

Jeff Trembly

cc: UST Policy Commission Members

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

a.) Sources

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

b.) Uses

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

c.) Summary

Projected Total Available Funds	$48,852,100
Total Uses	-$44,886,800
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.

DRAFT

ARIZONA UNDERGROUND STORAGE TANK POLICY COMMISSION

January _____, 2010

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, Arizona 85007

Re: Possible Extension of UST Excise Tax and Extension of State Assurance Fund Claims Deadline; Follow-up to November 11, 2009 Letter

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

This letter is written on behalf of the Arizona Underground Storage Tank Policy Commission (Commission). The Commission is specifically authorized to transmit recommendations regarding the Underground Storage Tank (UST) Program to ADEQ, the Legislature and the Governor. A.R.S. § 49-1092(E)(2). Among its mandatory duties, the Commission must evaluate the appropriate use of assurance account monies, the need for additional assurance account monies or other monies to meet the needs of the program, and dates to phase out the assurance account. A.R.S. § 49-1092(D)(2). The assurance account is more commonly referred to as the State Assurance Fund (SAF).

Our November 11, 2009 letter to you expressed concern with potential additional transfers of money from the SAF in fiscal year 2010, but recognized that such transfers were likely inevitable given the ongoing budget crisis. The Commission also recommended that the Legislature consider extending the current penny per gallon excise tax on regulated substances placed into underground storage tanks (A.R.S. § 49-1041(A)), or seek alternative funding mechanisms, in order to ensure that the SAF contains enough money to meet ADEQ's future obligations once the tax stops being collected.

The purpose of this letter is to elaborate and expand upon the Commission's initial recommendation. The recommendations contained in this letter were approved by the Commission at its most recent meeting.

Current Key Dates for SAF: The current SAF deadlines were established in 2004 as part of SB 1306 (Laws 2004, Ch. 273). In order to be eligible for reimbursement from the SAF, SB 1306 required that sites be reported to ADEQ by June 30, 2006, and that claims for work at those sites be submitted by June 30, 2010. Because work must be completed prior to submitting a claim for reimbursement, the June 30, 2010 deadline is effectively a deadline for completing corrective action.

SB 1306 also provided that the penny per gallon excise tax terminates on December 31, 2013 or at such time as the fund accumulates $60 million, whichever occurs first. The $60 million figure represented an estimate of the amount of money that the state would need going forward to manage the UST program, manage state-lead sites and conduct long-term groundwater monitoring where needed, once collection of the tax ceased. Likewise, the dates for identification of sites and submission of claims represented an estimate, made in 2004, of reasonable times to complete these activities.

SAF Transfers and Impacts: Since the beginning of fiscal year 2008, approximately $58 million has been transferred from the assurance fund to the general fund because of budget shortfalls. As part of the "15 percent plan" required by the Governor of all state agencies, ADEQ proposed to transfer an initial $9 million from the SAF before the end of fiscal year 2010, and to make that level of transfer annually thereafter until budget conditions improve. (A $9 million annual transfer would represent roughly one-third of the excise tax collected annually.)

Even before the recently proposed transfers, the effect of prior transfers was projected by ADEQ to leave the fund with a balance of only approximately $12.5 million (rather than $60 million) upon termination of the excise tax. This would not allow ADEQ sufficient funds to implement the UST corrective action program after collection of the excise tax ends. It was in light of this analysis that the Commission recommended that the Legislature consider extending the excise tax or finding alternative funding sources.

The Commission believes that it will be impossible to generate stakeholder support for extension of the excise tax beyond 2013 if significant portions of annual

collections are being diverted to the general fund rather than being used for the purposes intended.

Current Deadline for Submitting Claims for Reimbursement from the Assurance Account: The current deadline to submit claims for reimbursement (June 30, 2010) was established in 2004 as a best guess estimate of a reasonable date that would allow for completion of cleanup at the universe of sites that were projected to exist. However, it now appears that significant work will remain undone by that date. It often takes a significant amount of time to get a claim approved, and because most cleanups are broken into phases with separate claims submitted for each phase, this greatly lengthens the time needed to complete the cleanup. Moreover, since the majority of owner/operators are small- and medium- sized businesses, the current economic climate has made it difficult to fund corrective action work while awaiting reimbursement. If the current claim submission deadline is not extended, these entities will face significant economic hardship and may not be able to survive. If the work does not get done, it will increase the universe of sites for which the state would have to assume responsibility, thereby exacerbating the significant funding shortfall that is already projected to exist when the tax expires.

The intent of the Legislature in SB 1306 was to provide adequate time for all eligible releases to be remediated to completion and corresponding claims submitted. It is now clear that the existing claim submission deadline will not allow this to occur.

Commission Recommendations: In light of the foregoing, the Commission recommends:

- Fund transfers from the SAF after FY 2010 should be avoided to the maximum extent possible in light of overall State budget considerations.

- The Legislature should consider extending the existing excise tax past its current expiration date (December 31, 2013), or alternative funding sources, as recommended in our November 11, 2009 letter.

- If the excise tax is extended, the current deadline for submitting claims for reimbursement (June 30, 2010) should be extended by an amount sufficient to allow cleanup work at sites identified by June 30, 2006 to be completed.

- The universe of sites at which SAF reimbursement is allowed should not be expanded beyond its current level (i.e., reimbursement should remain limited to sites identified to ADEQ by June 30, 2006).

If you have any questions, please contact me at (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 UNDERGROUND STORAGE TANK POLICY COMMISSION

January 19, 2010

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

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1700 West Washington Street
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Mr. Benjamin H. Grumbles, Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Re: Extension of UST Excise Tax
Extension of State Assurance Fund Claims Deadline
Follow-up to November 11, 2009 Letter

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

This letter is written on behalf of the Arizona Underground Storage Tank Policy Commission (Commission). The Commission is specifically authorized to transmit recommendations regarding the Underground Storage Tank (UST) Program to the Legislature, the Governor and the Arizona Department of Environmental Quality (ADEQ) [A.R.S. § 49-1092(E)(2)]. Among its mandatory duties, the Commission must evaluate the appropriate use of assurance account monies, the need for additional assurance account monies or other monies to meet the needs of the program, and dates to phase out the assurance account [A.R.S. § 49-1092(D)(2)]. The assurance account is more commonly referred to as the State Assurance Fund (SAF).

Our November 11, 2009 letter to you expressed concern with potential additional transfers of money from the SAF in fiscal year 2010, but recognized that such transfers were likely inevitable given the ongoing budget crisis. The Commission also recommended that the Legislature consider extending the current penny per gallon excise tax on regulated substances placed into underground storage tanks (A.R.S. § 49-1041(A)), or seek alternative funding mechanisms, in order to ensure that the SAF contains enough money to meet ADEQ's future obligations once the tax stops being collected. The purpose of this

letter is to elaborate and expand upon the Commission's initial recommendation. The recommendations contained in this letter were approved unanimously by all of the voting members of the Commission at its most recent meeting, January 11, 2010.

Current Key Dates for SAF: The current SAF deadlines were established in 2004 as part of SB 1306 (Laws 2004, Ch. 273). In order to be eligible for reimbursement from the SAF, SB 1306 required that sites be reported to ADEQ by June 30, 2006, and that claims for work at those sites be submitted by June 30, 2010. Because work must be completed prior to submitting a claim for reimbursement, the June 30, 2010 deadline is effectively a deadline for completing corrective action.

SB 1306 also provided that the penny per gallon excise tax terminates on December 31, 2013 or at such time as the fund accumulates $60 million, whichever occurs first. The $60 million figure represented an estimate of the amount of money that the state would need going forward to manage the UST program, manage state-lead sites and conduct long-term groundwater monitoring where needed, once collection of the tax ceased. Likewise, the dates for identification of sites and submission of claims represented an estimate, made in 2004, of reasonable times to complete these activities.

SAF Transfers and Impacts: Since the beginning of fiscal year 2008, approximately $58 million has been transferred from the assurance fund to the general fund because of budget shortfalls. As part of the "15 percent plan" required by the Governor of all state agencies, ADEQ proposed to transfer an initial $9 million from the SAF before the end of fiscal year 2010, and to make that level of transfer annually on a permanent basis. (A $9 million annual transfer would represent roughly one-third of the excise tax collected annually.)

Even before the recently proposed transfers, the effect of prior transfers was projected to leave the fund with a balance of only approximately $9.2 million (rather than $60 million) upon termination of the excise tax. This balance does not include additional future transfers for fiscal years 2010, 2011 and 2012. This would not allow ADEQ sufficient funds to implement the UST corrective action program after collection of the excise tax ends. It was in light of this analysis that the Commission recommended that the Legislature consider extending the excise tax or finding alternative funding sources.

The Commission believes that it will be very difficult to generate stakeholder support for extension of the excise tax beyond 2013 if significant portions of annual collections are being diverted to the general fund rather than being used for the purposes intended, and permanent transfers from the fund would be especially damaging for obtaining stakeholder support.

Current Deadline for Submitting Claims for Reimbursement from the Assurance Account: The current deadline to submit claims for reimbursement (June 30, 2010) was established in 2004 as a best estimate of a reasonable date that would allow for completion of cleanup at eligible sites that were projected to exist. However, stakeholder testimony indicates that significant work will remain undone by that date. Stakeholder testimony also indicates that it often takes a significant amount of time to get a claim approved, and because most cleanups are broken into phases with separate claims submitted for each phase, this greatly lengthens the time needed to complete the cleanup. Since the majority of SAF eligible-sites are small- and medium- sized businesses, the current economic climate has made it more difficult to fund corrective action work while awaiting reimbursement. If the current claim submission deadline is not extended, according to stakeholder testimony these entities will face significant economic hardship and may not be able to survive. If the work does not get done, it will increase the number of sites for which the state would have to assume responsibility, thereby exacerbating the significant funding shortfall that is already projected to exist when the tax expires. Furthermore, if UST sites are not cleaned up in a timely manner, this will delay urban and rural redevelopment.

The intent of the Legislature in SB 1306 was to provide adequate time for all eligible releases to be remediated to completion and corresponding claims submitted. Stakeholders have reported to us that the existing claim submission deadline will not allow this to occur.

Commission Recommendations: In light of the foregoing, the Commission recommends:

- Fund transfers from the SAF after FY 2010 should be avoided to the maximum extent possible in light of overall State budget considerations.
- The Legislature should extend the existing excise tax past its current expiration date (December 31, 2013), or provide alternative funding sources, as recommended in our November 11, 2009 letter. At a minimum the excise tax should be extended to meet the fund's incurred obligations, including $60 million to be transferred to the regulated substance fund.
- If the excise tax is extended, the current deadline for submitting claims for reimbursement (June 30, 2010) should be extended for a three year period.
- Eligibility for SAF payment should remain limited to releases which were reported to ADEQ before June 30, 2006 (i.e., reimbursement eligibility should not be expanded to include new releases reported to ADEQ after June 30, 2006).

If you have any questions, please contact me at (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