



**2014 Stakeholder Meeting  
New ADEQ Underground Storage Tank (UST) Program - Introduction**

Monday, July 28, 2014; 1:30 pm to 3:30 pm  
ADEQ, Rm 3175  
Phoenix, Arizona

**MEETING SUMMARY**

**Meeting Topics:**

1. Introduction/Process and Objectives
2. Background
3. Review of Federal and State requirements for UST Financial Responsibility (FR)
4. Summary of recent legislation and program elements
5. Discuss concept of having a “standard insurance policy” in Arizona

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**1. Introduction/Process and Objectives**

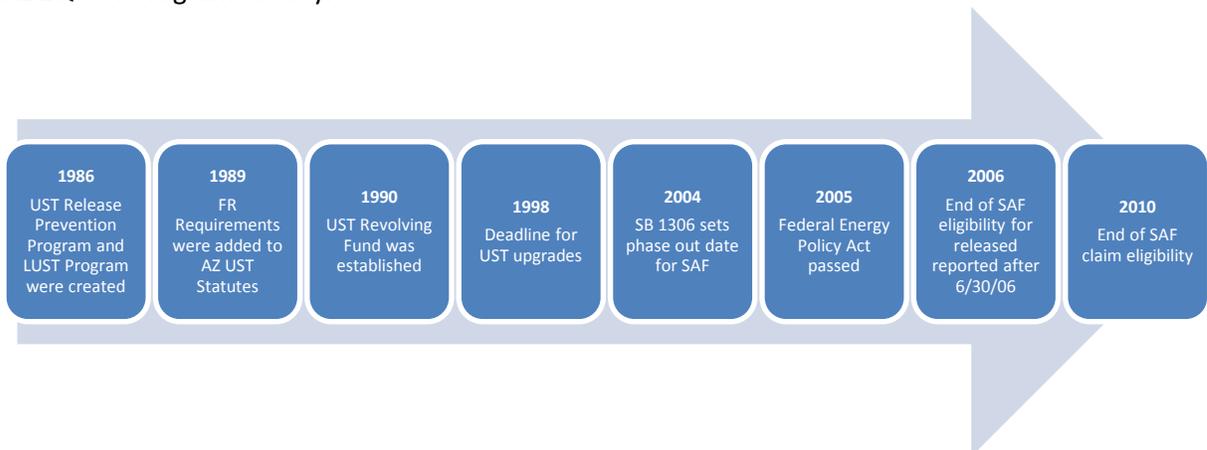
Henry Darwin, ADEQ Director, welcomed and thanked the meeting participants for attending the stakeholder meeting. ADEQ is developing a new UST/LUST Program and holding a series of stakeholder meetings to create a framework for the program.

The objectives of the meetings are to gain input on program elements and develop a consensus bill to deliver to the Arizona legislature. Each stakeholder meeting will have a focused topic with open discussions.

**2. Background**

Laura Malone, ADEQ Waste Programs (WPD) Division Director, provided a brief summary of the UST Program and the current conditions of the program.

ADEQ UST Program History:



Today, there are approximately 6,800 facilities and 716 open LUSTs. The State Assurance Fund (SAF) has paid approximately \$335 million in claims for corrective actions at approximately 2,600 facilities and paid approximately \$65 million for State Lead cleanups.

The State Lead corrective actions are funded through the Regulated Substance Fund (RSF). RSF funding will cover off-site and groundwater contamination for State Lead cleanup at orphan sites. This funding is anticipated to end by December 2017. Funding is needed for Leak Prevention, LUST Corrective Action and the State Lead Program.

The Arizona Office of the Auditor General conducted a performance audit of the UST Financial Responsibility (FR) Program and released their report on September 3, 2013. Approximately 31% of the total UST facilities were found to have expired financial responsibility coverage. The Auditor General provided eight recommendations to improve the FR Program and currently, ADEQ has implemented five of eight recommendations. Improvements include conducting more outreach, hiring new staff, and reviewing data.

### 3. Review of Federal and State requirements for UST Financial Responsibility (FR)

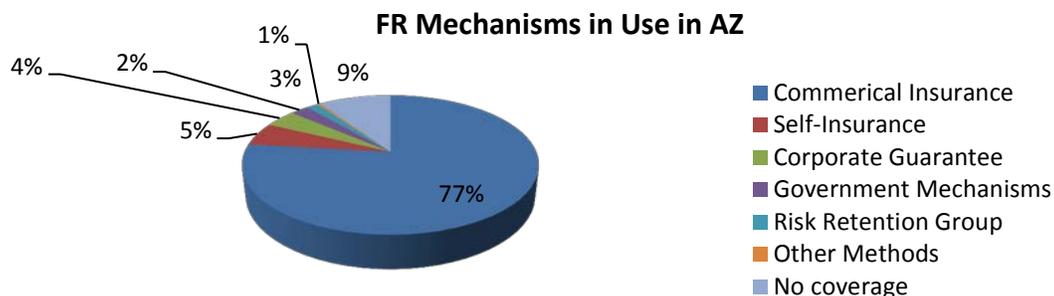
Denise McConaghy, ADEQ WPD FR Manager, presented the federal and state UST FR requirements.

Federal financial responsibility requirements can be found in 40 Code of Federal Regulations (CFR) Part 280 Subpart H and state requirements in the Arizona Revised Statutes (A.R.S.) §49-1006.. Owners and operators of USTs are required to demonstrate FR in order to cover clean up costs if a release occurs and compensate third parties for personal and/or property damages.

Acceptable FR mechanisms include:

- Financial Test of Self-insurance
- Corporate Guarantee
- Insurance/Risk Retention Group Coverage
- Surety Bond
- Letter of Credit
- Certificate of Deposit (*AZ specific FR mechanism*)
- Trust Fund
- Local Government Financial Test
- Local Government Guarantee
- Local Government Fund

Owners and operators may use one or a combination of FR mechanisms to meet FR requirements. FR documentation must be submitted on an annual basis to maintain compliance.



#### 4. Summary of recent legislation and program elements

Laura Malone provided a summary of the new legislation, covering House Bill 2708 and Senate Bill 1314. In the Second (2<sup>nd</sup>) Regular Session 2014, the State Senate made changes to the UST Program through House Bill 2708, which include delivery prohibition to USTs not in compliance with FR, repeals the transfer of monies from the UST Assurance Account to the State Highway Fund, and the use of the UST Assurance Account to develop a new UST program and implement new UST program and existing UST leak prevention program.

The new UST corrective action program is required to:

- Conduct baseline assessments of all existing USTs to determine whether they are leaking and perform any necessary corrective actions;
- Remove USTs at the request of the owner or operator; and
- Develop a “standard policy” and require owners or operators who use private insurance to meet FR requirements to obtain the standard policy.

For Senate Bill 1314, it was noted that as an alternative to the baseline assessment or the standard policy owners and operators can demonstrate that FR requirements are already being met.

As part of the new legislation, ADEQ is conducting stakeholder meetings to develop a framework for the new UST program. The first meeting focused on the development of the standard policy.

#### 5. Discuss concept of having a “standard insurance policy” in Arizona

ADEQ plans to work with the Arizona Department of Insurance and private insurance companies to develop a standard insurance policy that will be required by law for every UST system subject to a baseline assessment. An owner/operator that is currently meeting FR requirements has the option to opt-out of a baseline assessment.

**INTENT:** The standard policy or FR mechanism MUST cover all releases identified after the Baseline Assessment.

For owners/operators who opt-out:

- Ability to “opt-out” on a per facility basis;
- Will receive no State funding or ADEQ corrective action assistance; and
- If the facility is sold after the baseline assessment is closed, the new owner/operator is ineligible for state cleanup funds.

#### 6. Comments and concerns

##### Baseline Assessments:

- ADEQ plans to hire contractors to conduct the baseline assessments and ADEQ will oversee the contractor’s work.
- There is uncertainty about the sustainability of the funds to conduct baseline assessments and cover clean-up costs if a release is found during a baseline assessment. Response: ADEQ hired a consultant to conduct an actuarial study to provide an estimate on how long and how much funding is needed.

- It was recommended that ADEQ have a transition program for owners/operators that participate in the baseline assessments. Time is needed to transition from a previous policy to the standard insurance policy.
- For owners/operators that may switch FR coverage at a later date, ADEQ will only cover the costs of the initial baseline assessment. State law may be developed where there is no period where an owner/operator is not covered.
- Cases where a release was assessed at a different standard may not be re-opened unless the site poses a high risk.
- Define the eligibility requirements for the baseline assessments. For example, are owners/operators that use self-insurance eligible to request a baseline assessment and if so, will ADEQ clean-up any discovered release?
- The benefit of baseline assessments is that the UST owner, operator and insurance will know the UST is not leaking. The “standard policy” would cover any release discovered after the baseline assessment regardless of when the release may have occurred.

### **Standard Policy:**

- Standard policy will cover all releases after a baseline assessment is conducted. In some instances, an owner/operator obtained an insurance policy to cover potential releases, but the policy did not cover the release. A standard policy may be a solution to this issue.
- ADEQ plans to work with private insurance companies to obtain insurance policy examples to develop a standard policy. The goal is to develop a policy that covers all releases after a baseline assessment is conducted and where the policy premium is affordable.
- Participants asked if other states have a similar policy. Response: The State of Iowa’s is similar.
- We’re focusing on insurance at this time because approximately 80% of our UST owners or operators rely on insurance to meet financial responsibility requirements.
- There should be no lapse in coverage. If an owner/operator decides to change coverage, then one must start as soon as the other ends.

### **Actuarial Study:**

- ADEQ has a consultant that is conducting an actuarial study regarding the State Assurance Account. A financial analysis for the new and revised underground storage tank corrective action program, implementation of both the new corrective action program and the existing UST leak prevention program is being conducted.
- The study shall analyze the costs associated with the proposed baseline assessments, UST removals, corrective action costs, etc. The study should be completed within the next three months, tentatively October-November 2014.

### **Stakeholder questions:**

- Will proposed baseline assessments be paid by the SAF?  
*DEQ: yes, with deductible options*
- Will companies do the work on their own and submit invoices to the state or will the work be overseen directly by the state?  
*DEQ: we are not proposing a reimbursement program. We are proposing to have the state directly manage those projects.*

- How will we know the expected cost of this to the state (taxpayers)?  
*DEQ: An actuarial study is being conducted to provide those cost estimates.*
- How does a consultant get on the contractor list? Won't you need more contractors than you have on the list?  
*DEQ: There is a state contracting process to determine approved vendors.*
- Why should UST owners agree to go through the baseline assessment process when they don't know if the state will be able to fund the entire cleanup? It's a risk to the UST owner.
- Baseline assessments will take time to complete. Will there be a transition program to carry UST owners through until the "standard policy" is effective?  
Will insurance companies drop coverage before the baseline assessment?
- Will ADEQ reopen old closed releases if contamination is identified during the baseline assessments:  
*DEQ: That is not the intent of the proposal; however, if data shows that there is a risk, ADEQ will evaluate whether the previously closed release should be re-opened.*
- What will happen if mom and pop buy a site? Will there be another baseline assessment required? Will the state pay for it? Who will pay for the cleanup if contamination is found? Mom and pops won't want a baseline assessment due to fear of loss. There must be assurances for them that the state will protect them.
- As an UST owner - if you want to change carriers/policies because you find a cheaper rate - will insurance companies fight between themselves? Who will pay for the baseline assessment then?
- How many releases does the state currently have in which insurance companies are not covering the cleanup?
- Are there specific companies that "fit" the "standard policy" already?
- Will the "standard policy" be taken from an existing insurance provider (best fit) or will the legislature create the policy or will it be something that must be created in rule?
- What will be the cost to the UST owner or operator for the new "standard policy"?
- How does the state determine which laws need to be changed without adequate quantitative data?
- Will it work if parties are allowed to "opt out"?
- If self-insured "opt out" and go bankrupt – who pays?

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- If self-insured do not opt out – does the state pay their cleanup costs?
  - Are other states doing something similar?
  - Will there be a clearly defined relationship between the UST owner, operator, ADEQ and the independent contractor?
  - Is there more information available on state administered insurance funds?
  - Can the state pay the difference between the cheaper policy that may not provide expected coverage and a policy that will assure payment for everything?

**ADEQ questions:**

For insurance providers –

- What do you need as a baseline assessment so you will offer a “Standard” policy that ensures coverage for all releases discovered after the baseline assessment?

**Future Stakeholder/AEQ Suggested Meeting Topics:**

- Standard Insurance Policy
- Baseline Assessments
- Relationship between ADEQ, RPs and Contractors

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**Next meeting:**

Topic: Arizona Standard Insurance Policy

Date/Time to be determined

For future meetings, please visit the ADEQ UST Stakeholder Meeting webpage at:

<http://www.azdeq.gov/environ/waste/ust/lust/stakeholder.html>