



# NEW ADEQ UST/LUST PROGRAM

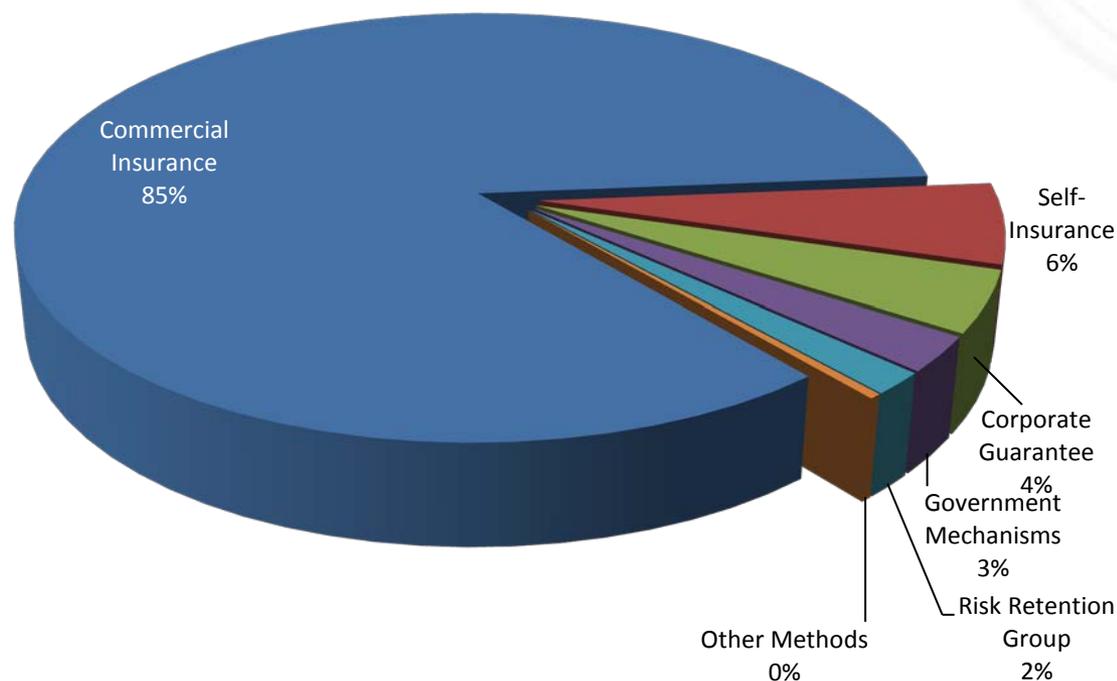
2014 Stakeholder Meeting – September 25, 2014



- **Introduction/Process and Objectives**
- **Status of FR compliance**
- **Insurance survey results**
- **Recap of draft framework**
- **Summary of actuarial study**
- **Next Steps**



## FR Mechanisms Currently Used in Arizona



(NOTE: percentages are approximate)

## Facilities/Tanks that Have Never Had FR in Place

- Approximately 9% of facilities
- ADEQ is currently undertaking an initiative to address these non-compliant facilities:
  - Identifying O/Os and sending correspondence requesting FR documentation and stating consequences of non-compliance
  - Amendment to A.R.S. §49-1023 authorizing stop use orders for FR violations effective July 24, 2014.
  - ADEQ finalizing procedures and will begin implementation for O/Os that do not respond to requests for FR documentation and are determined to be out of compliance with A.R.S. § 49-1006

**Q1: Does your insurance company provide a "standard policy" similar to what was discussed at the first stakeholder meeting?**

- Most carriers responded “no”
- Some stated that their current policy meets the requirements of 40 CFR § 280.
- Many stated that carriers are different and have exclusions and or conditions in their particular policies.
- Seems to be essentially an occurrence-based policy.

## **Q2: What do you estimate as the range in cost for premiums and deductibles associated with the proposed "standard policy"?**

- Responses varied:
  - Don't know
  - More expensive
  - Maybe less (but only with exclusions)
  - Premiums would skyrocket
- Cost ranges given:
  - \$10,000 - \$25,000
  - Potentially thousands of dollars

**Q3: What information do you, as an insurer, need from a baseline assessment that will enable you to offer a "standard policy" that ensures coverage for all releases discovered after the baseline assessment is completed (regardless of when the release may have occurred)?**

- Most carriers stated that a baseline assessment would need to be comprehensive and contain elements such as the following:
  - Testing of soil sand groundwater
  - Line testing
  - Phase I & II site assessments
- Hurdles:
  - Tanks closed in place
  - Issues with old tanks
  - Determining when enough testing has been completed

**Q4: Is the baseline assessment necessary to establish a "standard policy" that will cover releases identified after a future date?**

- If a new facility (no previous tanks) a baseline assessment is probably not required.
- Insurers may treat the baseline assessment as the retro date
- O/Os may have issues switching companies because the retro date is a little different for every insurer
- Maybe not (e.g. O/Os that self-insure may opt out)
- Issues related to secondary releases (15-20% ?)
- Option: ADEQ issues NFA letter after the baseline assessment (and clean-up – may be looked at it as a higher quality risk by insurers.

## **Q5: Would you continue to provide coverage to parties you currently insure throughout the baseline assessment?**

- Responses varied:
  - Yes, have established long-term relationships with/have made commitments to insured
  - Maybe – higher degree of comfort with a new station & tanks. More concern with the O/O that has been operating for years and wants to keep operating.
  - If in compliance with regulations, probably would continue.
  - A lot of insurers may stop writing policies in Arizona
  - Negligence/non-compliance is an issue

## **Q6: What are your greatest concerns regarding the concept of the proposed "standard policy"?**

- Responses varied:
  - There will still be typical insurance issues (e.g., spills not during policy period that may not have been discovered during baseline assessment).
  - High premiums/insurance costs.
  - Commingled releases/plumes (e.g., have to dip into two pools of money).
  - Being put in a position of paying out claims if insured are negligent.
  - Fewer insurance options for Arizona O/Os.
  - What happens if an O/O wants to change insurers.
  - Will be difficult to get carriers to agree to standard policy language.

## **Q8: Any other thoughts/concerns?**

- Actuarial study - huge ticket item. What impact will it have on the State moving forward?
- Some carriers will write this type of policy, but the deductible will be high (\$15,000?)
- Admitted policy already approved by the Arizona DOI. Would have to refile with AZ DOI.
- Standard policy is too much of a hurdle.
- Use an online system for FR applications so would have to redo online system to tie the new policy into it.
- Would not agree to it - would quit writing policies in Arizona or carve out Arizona facilities from policies.

- **Proposed framework for new program:**
  - Development of Standard Policy (UST Insurance)
  - Baseline Assessments
  - UST Removals
  - Cleanup (Corrective Actions)



## **Development of Standard Policy (UST Insurance)**

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

The Arizona Department of Insurance, in conjunction with ADEQ, will work with private insurance companies to develop a standard insurance policy that will be required by law for every UST system subject to Baseline Assessment after the date of the Baseline Assessment.

*OR*

An owner/operator will have the option of demonstrating to ADEQ that its means of meeting FR (through net worth, bonding, or other forms of insurance) meets applicable state and federal law in lieu of the standard insurance policy.

## Baseline Assessments

- The protocol for the Baseline Assessment will be developed in conjunction with private insurance companies.
- The proposal requires an ADEQ managed Baseline Assessment to be conducted at any facility (with USTs that are not permanently closed):
  - That does not have current information regarding site conditions consistent with the protocol for the Baseline Assessment; and
  - That satisfies 40 CFR Part 280 Financial responsibility, in part or whole, through insurance; unless the owner/operator voluntarily opts-out by submitting to ADEQ for review and approval written documentation that it is in compliance with State and federal Financial Responsibility requirements.

## Baseline Assessments

- ADEQ authority to prohibit delivery (“red tag”) and force closure of any system at a site that does not participate in the Baseline Assessment where the Baseline Assessment is required.

## UST Removals

- ADEQ will manage projects using private contracts to administer and fund eligible UST tank removals upon request of the owner or operator.
- Deductible will be required unless the owner/operator demonstrates a financial hardship.

## Cleanup (Corrective Actions)

- **ADEQ managed:** State Lead program will use private contracts with experienced, qualified consultants on sites where the owner/operator is unwilling or unable to complete the corrective action.
- **Owner/Operator managed:** Competent, willing owner/operator may complete their corrective actions with their own contractors at their own expense.



## Summary - Actuarial Study