



Underground Storage Tank
Assurance Account Liabilities
Report

September 1, 2009

ADEQ Publication #
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Purpose

Senate Bill 1306, Laws 2004, Chapter 273 (46th Legislature, Second Regular Session, 2004) provided for the phase out of eligibility and eventual termination of the Underground Storage Tank Assurance Account, hereafter referred to as the State Assurance Fund (SAF). Senate Bill 1306 also established a Regulated Substances Fund (RSF) to be used by ADEQ for cleanup of underground storage tank (UST) releases following termination of the SAF. The RSF is to be funded through transfers of balances remaining in the SAF after payment of claims that are submitted to ADEQ by June 30, 2010.

This report is required by that act of the Legislature:

“By September 1, 2009, the department of environmental quality shall prepare and submit a report to the governor, the president of the senate and the speaker of the house of representatives regarding the anticipated financial liability of the underground storage tank assurance account based on applications for payment submitted to the department by June 30, 2009.” [Laws 2004, Ch. 273, sec. 10].

Summary of Findings

Past transfers from the Underground Storage Tank Fund to the state general fund to address budget shortfalls have significantly reduced the funding available to perform UST cleanups after termination of the SAF in 2013. Substantially less funding than was anticipated will be available for future UST site cleanup than was envisioned when the SAF termination was originally authorized in 2004. Even less funding could be available if additional transfers from the UST Fund are required during FY2011 and FY2012.

The availability of sufficient funding to undertake UST cleanups after the SAF is terminated is important to many Arizona communities which will directly benefit through improvement of the environment, through the return of UST cleanup sites to productive reuse, and through the increase in property values and development potential that will result.

Background

The SAF was established in 1990 to assist eligible UST owners, operators and others in meeting the potentially high costs of leaking UST cleanups and to fund ADEQ's cleanup of orphaned leaking USTs where the owner or operator cannot be located or is not otherwise capable of performing cleanups [A.R.S. §49-1051]. The SAF is funded through a \$0.01/gallon excise tax on the operation of regulated USTs [A.R.S. §49-1031].

The SAF may be used to:

- 1) provide reimbursement coverage to UST owners, operators and volunteers for eligible cleanup costs;
- 2) fund ADEQ costs for administering cleanup requirements;
- 3) fund ADEQ costs for administering the SAF; and
- 4) for reasonable and necessary costs incurred by ADEQ to perform leaking UST cleanups.

As of June 30, 2009, there were 987 UST releases at 451 UST facilities located throughout Arizona that are eligible for SAF coverage (see maps, Attachment 1). Approximately 345 of those facilities have releases to both soil and groundwater, and 106 have releases that have impacted soil only.

Since UST program inception in 1990, ADEQ has closed 7,505 releases of a total 8,512 reported (88%) and has reimbursed a total of \$306,130,995 to UST owners, operators and volunteers for eligible cleanup costs.

Costs eligible for reimbursement to UST owners may include those incurred for cleanups that are reasonable, necessary, cost effective and technically feasible; for sampling, analysis and reporting that verifies the existence of an UST release that requires cleanup; and, under specific circumstances, closure of the UST system.

ADEQ accesses the SAF to perform cleanups of orphaned leaking USTs where the owner or operator cannot be located or where immediate action is required to protect human health. In addition to protecting human health, these cleanups have had significant positive impacts on their surrounding communities, including enhancing local economies, increasing property values, generating new jobs, and creating new commercial and recreational space on sites once viewed as liabilities.

The basic SAF limit of coverage is \$500,000 per UST release. However, a UST owner or operator may qualify for coverage of up to \$1 million under certain conditions. An eligible owner, operator or volunteer may receive up to 90% of eligible costs from the SAF, less 10% which is retained as a co-payment.

The 2004 passage of Senate Bill 1306 established a schedule to phase out and terminate (or “sunset”) the SAF (Attachment 2). The phase out began with the termination of eligibility for new UST releases reported after June 30, 2006. Only those UST releases that were reported to ADEQ before June 30, 2006 may qualify for reimbursement coverage under the SAF.

Owners, operators or volunteers will not be able to submit claims for payment of eligible costs after June 30, 2010. In recognition of the long-term nature of many UST cleanups and the continuing need to clean up orphan USTs yet to be found, Senate Bill 1306 also established and anticipated an adequately funded RSF and Monitored Natural Attenuation Account through which ADEQ would perform cleanups at orphan sites and at sites where natural attenuation of contamination will continue beyond June 30, 2010 [A.R.S. §49-1015.01].

On July 1, 2011, any monies remaining in the SAF after eligible claims are paid will be transferred to the RSF. The SAF and the \$0.01/gallon excise tax (or UST tax) will sunset upon receipt of \$60 million into the RSF or December 31, 2013, whichever occurs earlier.

Anticipated Financial Liability of the State Assurance Fund

UST tax revenues are deposited into the State Assurance Fund account of the UST Fund [A.R.S. §49-1051]. UST Fund revenues and SAF liabilities are described below and on Attachment 3.

UST Program Revenues

The approximate SAF balance as of June 30, 2009 is \$19,486,600. Excise tax revenues of approximately \$29,400,000 per year are added to this balance to result in total projected UST revenue through December 31, 2013 of \$151,786,600.

Chapter 12, House Bill 2643 (49th Legislature, First Regular Session, 2009) will require transfers of \$14,653,700 from the SAF to the state general fund to address FY10 budget shortfalls.

UST Program Liabilities

As of June 30, 2009, there were 987 UST releases at 451 UST facilities of record that are eligible for SAF coverage (there are multiple UST releases at many facilities). Approximately 345 of those facilities have releases to both soil and groundwater, and 106 have releases that have impacted soil only.

- Eligible UST Releases

Total remaining SAF coverage (coverage limits less claims paid to date) for the remaining 987 eligible UST releases is \$214,152,669 and represents the upper limit of SAF claims liability. It is extremely unlikely, however, that claims for this amount of cleanup work will be presented to ADEQ for payment by June 30, 2010.

In ADEQ's experience, a more realistic estimate of potential claim liabilities to the SAF is derived

by assuming an average of \$250,000 will be required for cleanup of a facility at which both soil and groundwater have been impacted, and an average of \$100,000 for a soil only facility cleanup. The estimated cost to remediate these 451 facilities is approximately \$96,850,000. Though it is also unlikely that claims for this amount of cleanup work will be presented for payment by June 30, 2010, ADEQ feels this estimate is a more realistic representation of potential claims liabilities to the SAF.

- Cost to Administer the SAF/Corrective Action Program

In accordance with A.R.S. § 49-1051, the SAF may be used to reimburse the department for costs incurred for administering cleanup requirements and for costs incurred for administering the SAF. ADEQ's estimate of administration costs through December 31, 2013 is \$27,783,000.

- FY2010 Transfers from the UST Fund

For the purposes of this estimate, transfers from the UST Fund are accounted as a liability to the SAF. Since the enactment of Senate Bill 1306 in 2004, approximately \$43,000,000 has been transferred from the UST Fund to the state general fund to address budget shortfalls. The majority of the transfers from the UST Fund have derived from the SAF.

House Bill 2643 authorizes transfers of an additional \$14,653,700 from the SAF in FY2010 to the state general fund. Potential future transfers from the UST Fund for FY2011 and FY2012 may be realized which could impact total liabilities (and available revenues) to the SAF, and ultimately the RSF. ADEQ has not attempted to predict the impacts to the SAF that would result if further transfers are realized.

- Total Projected SAF Liability

The estimated liability to the SAF from June 30, 2009 through the termination of the fund on December 31, 2013 is \$139,286,700.

Regulated Substances Fund

Session law [Laws 2004, Ch. 273, sec. 8] specifies the availability of a maximum of \$60,000,000 for transfer from the SAF to the RSF. This figure represents a conservative estimate of costs associated with ADEQ's performance of UST cleanups of existing and future (yet to be documented) orphan sites and at sites where natural attenuation of contamination will continue beyond June 30, 2010.

- Total Available for Transfer to the Regulated Substances Fund

The current projected SAF balance available for transfer to the RSF (total SAF revenues minus liabilities through December 31, 2013) is \$12,499,900. Potential future transfers from the UST Fund for FY2011 and FY2012 are not part of this estimate.

Analysis

The projected SAF balance available for transfer to the RSF of \$12,499,900 is substantially less than the \$60,000,000 that was anticipated when the termination of the SAF was established through Senate Bill 1306. The projected balance available for transfer to the RSF has been significantly impacted by past transfers from the UST Fund to the state general fund to address past budget shortfalls and will be further reduced if additional transfers from the UST Fund are required during FY2011 and FY2012.

Smaller than anticipated SAF balances available for transfer to the RSF will also impact ADEQ's future ability to perform cleanups at orphan sites throughout the state that may be discovered to threaten human health. In addition, ADEQ's ability to perform cleanups of orphaned leaking USTs where the owner or operator cannot be located will also be reduced.

ADEQ's ability to perform future site cleanups depends upon an adequately funded RSF. In addition to protecting human health and improving environmental conditions, ADEQ's future performance of these cleanups will benefit the economy of many Arizona communities through improvement of the environment, through the return of UST cleanup sites to productive reuse, and through the increase in property values and development potential that will result.

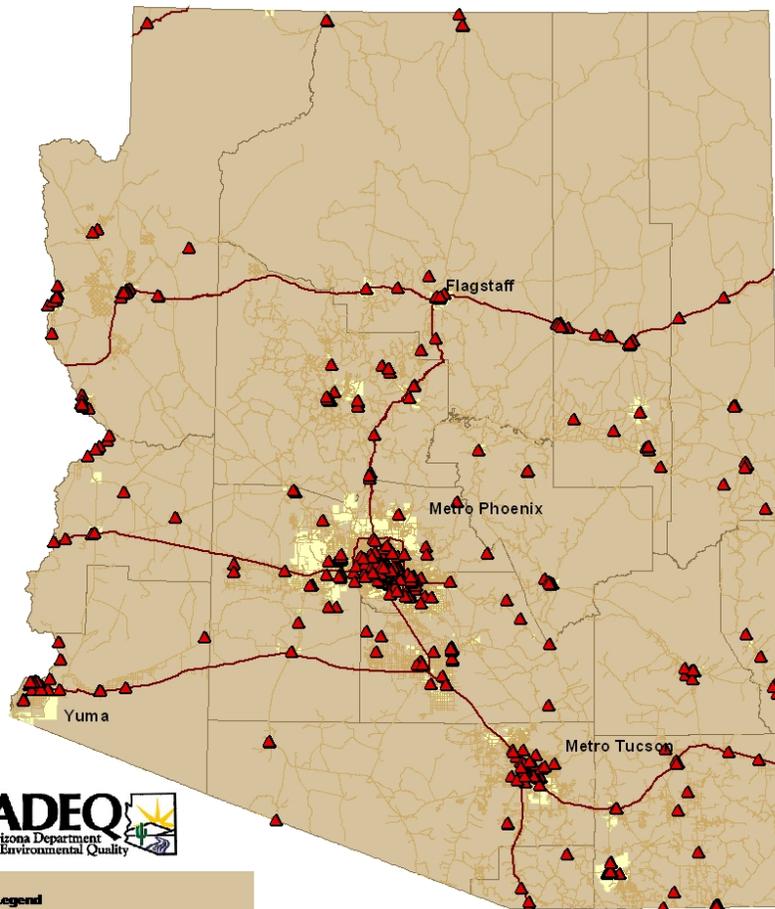
Attachment 1

Arizona Leaking Underground Storage Tank Maps

- ◆ Statewide

- ◆ by County

Arizona Open LUSTs

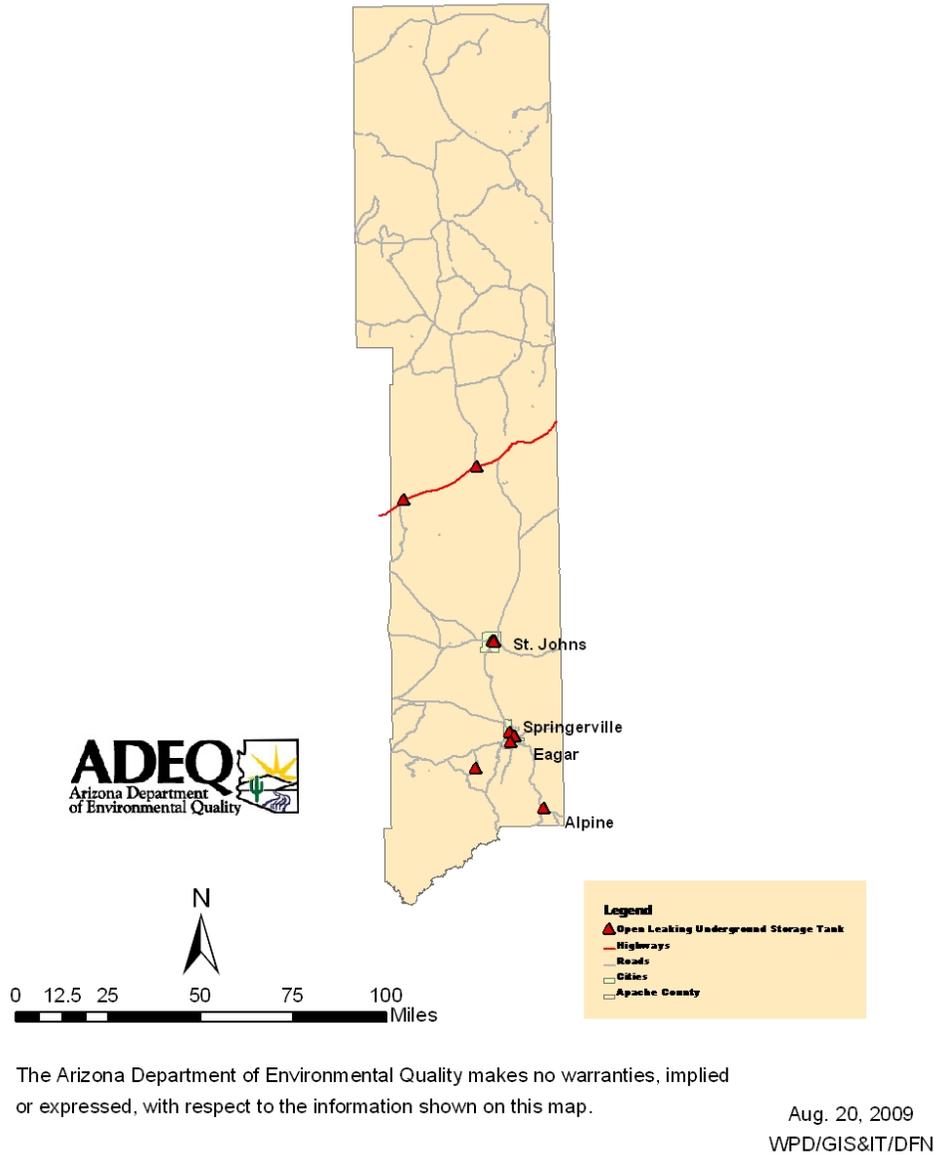


Legend
▲ Open Leaking Underground Storage Tank
— Highways
— Roads
— Arizona Towns

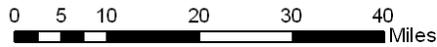
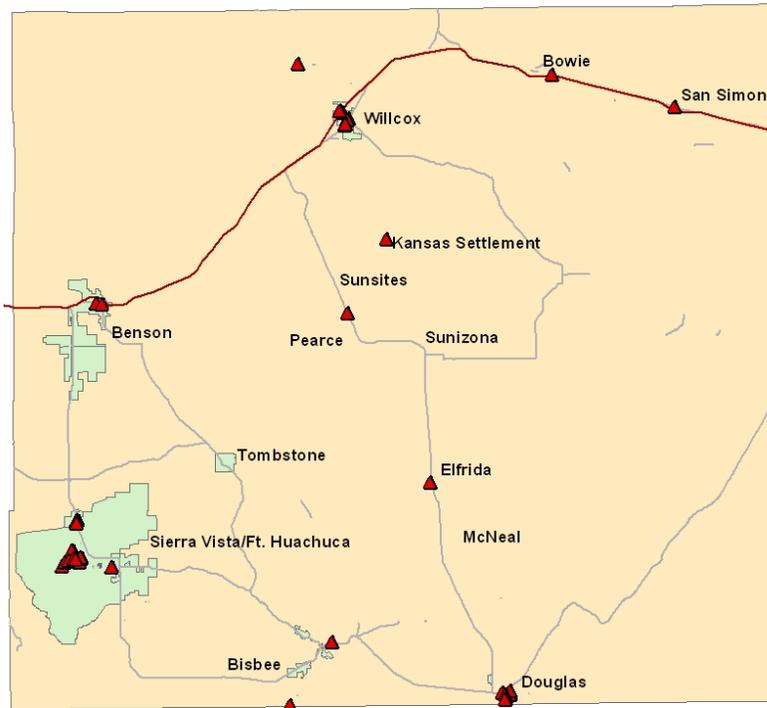
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Apache County Open LUSTs



Cochise County Open LUSTs



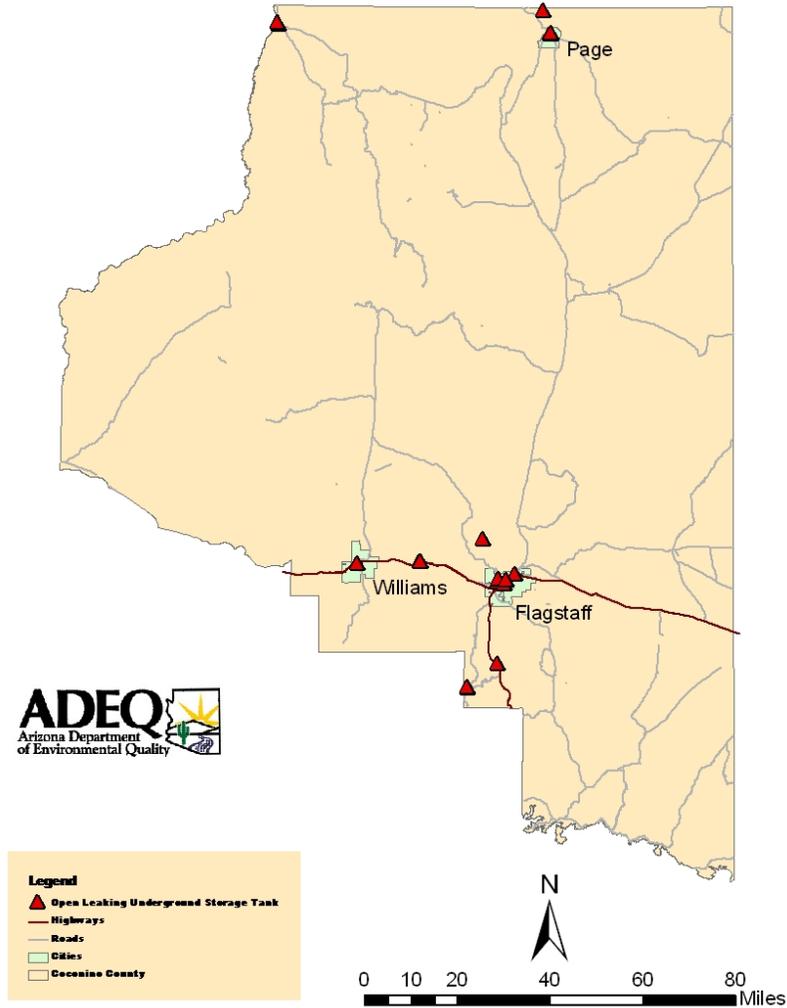
Legend

- ▲ Open Leaking Underground Storage Tank
- Highways
- Roads
- Cities
- Cochise County

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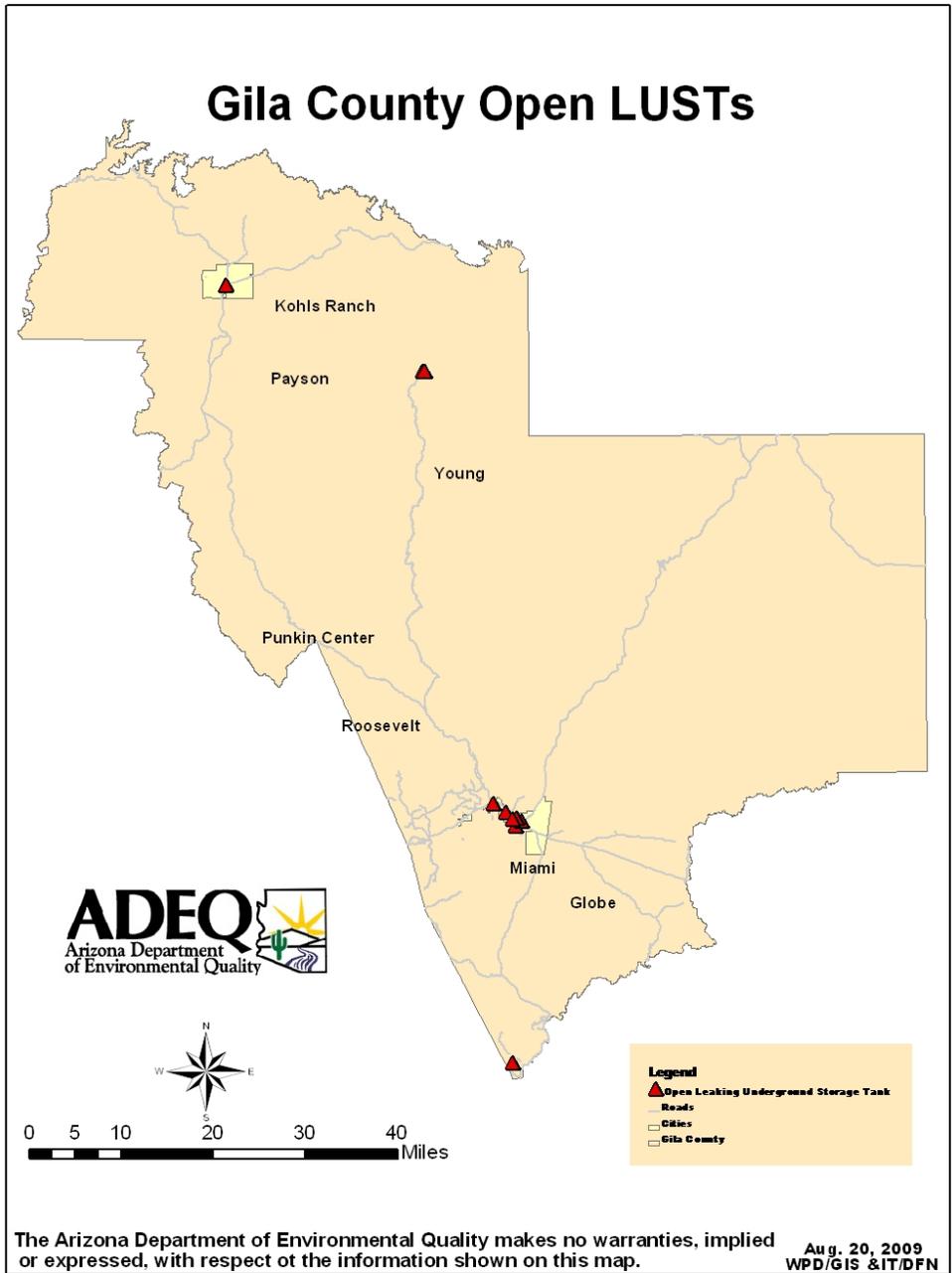
Coconino County Open LUSTs



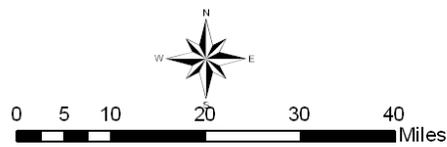
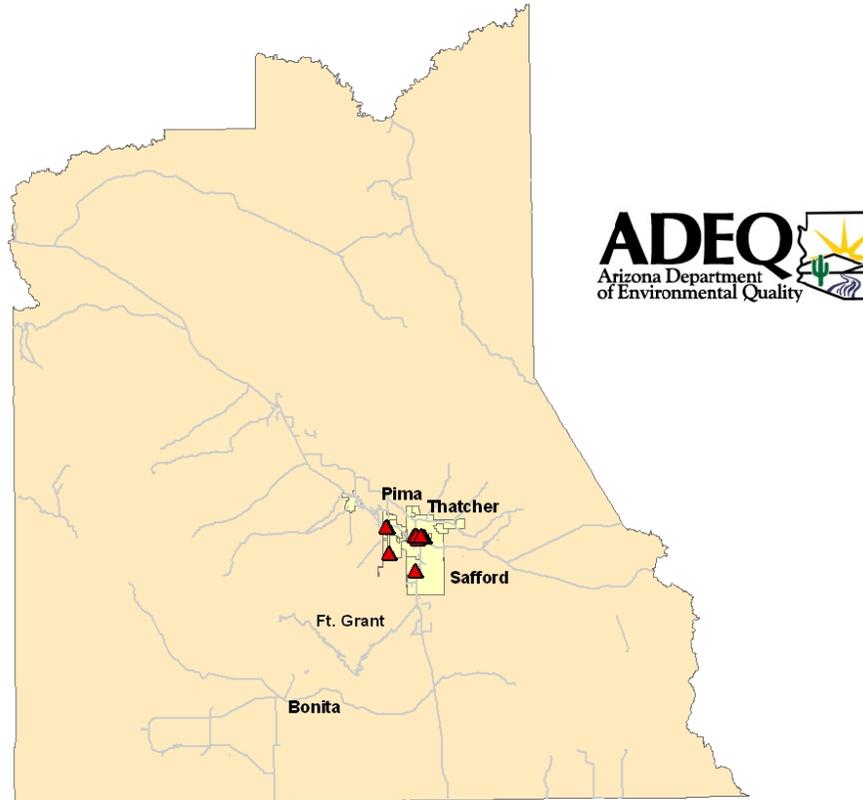
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Gila County Open LUSTs



Graham County Open LUSTs



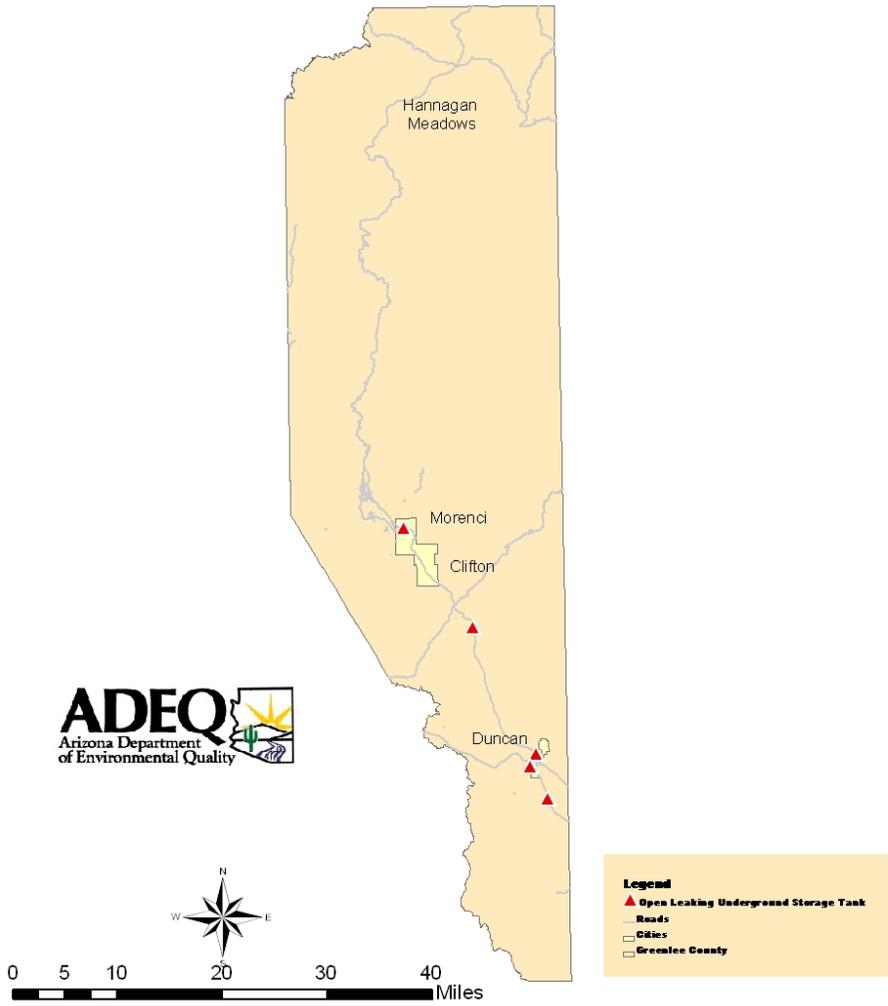
Legend

- ▲ Open Leaking Underground Storage Tank
- Roads
- Cities
- Graham County

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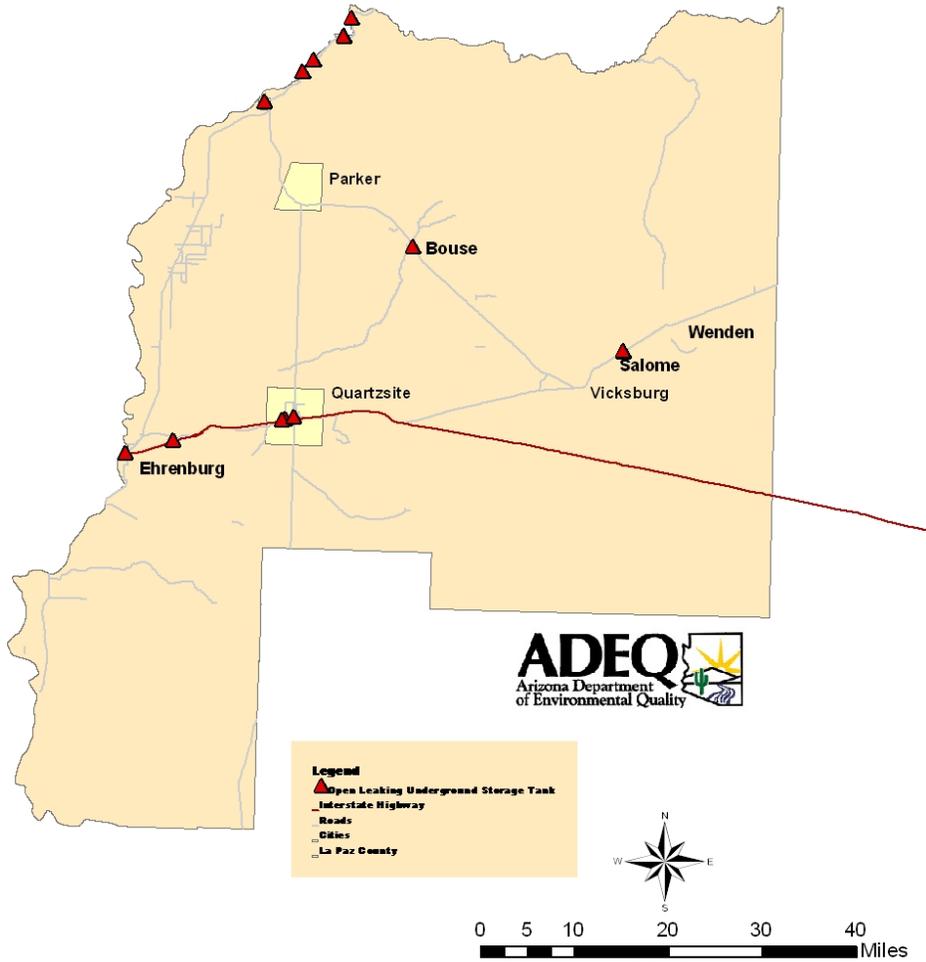
Greenlee County Open LUSTs



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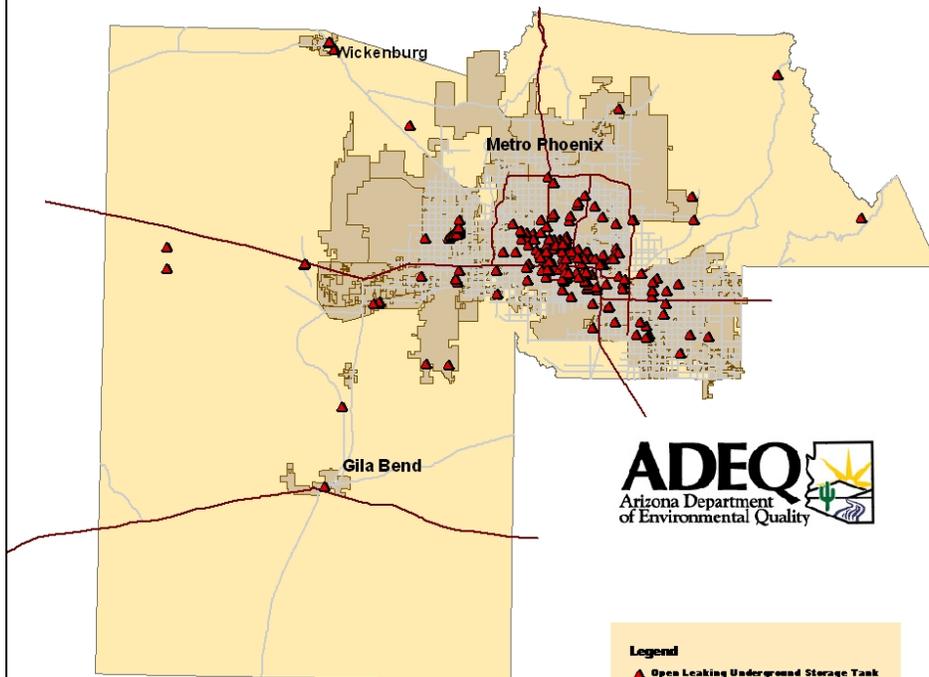
La Paz County Open LUST Sites



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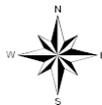
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Maricopa County Open LUSTs



Legend

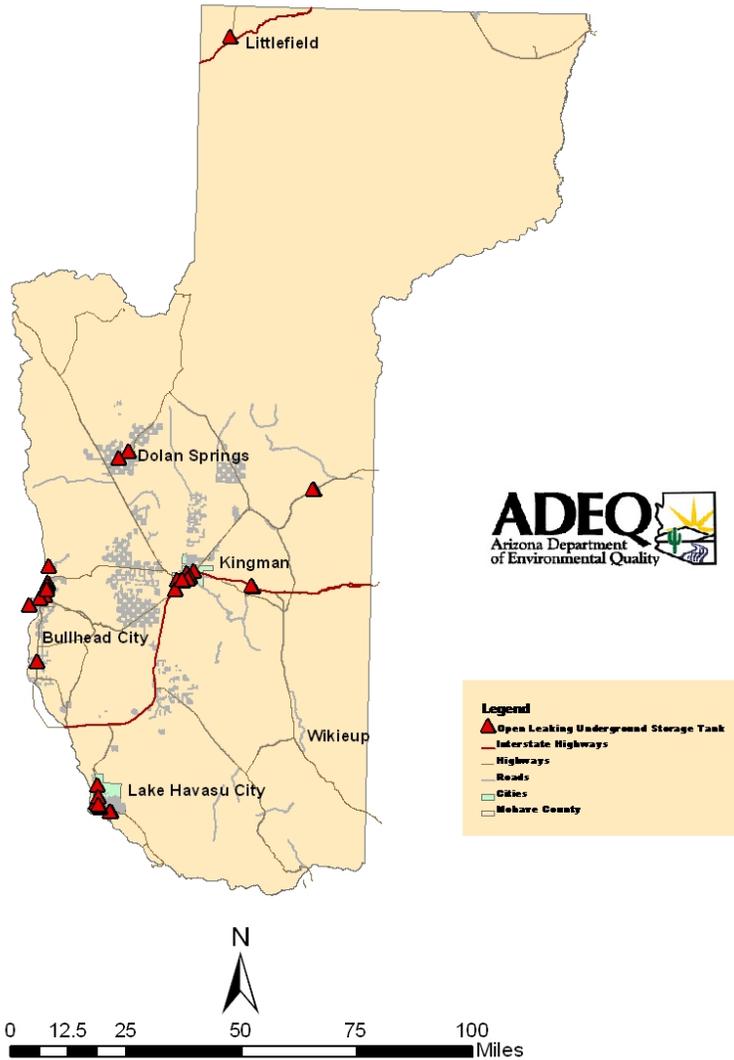
- ▲ Open Leaking Underground Storage Tank
- Highways
- Roads
- Cities
- Maricopa County



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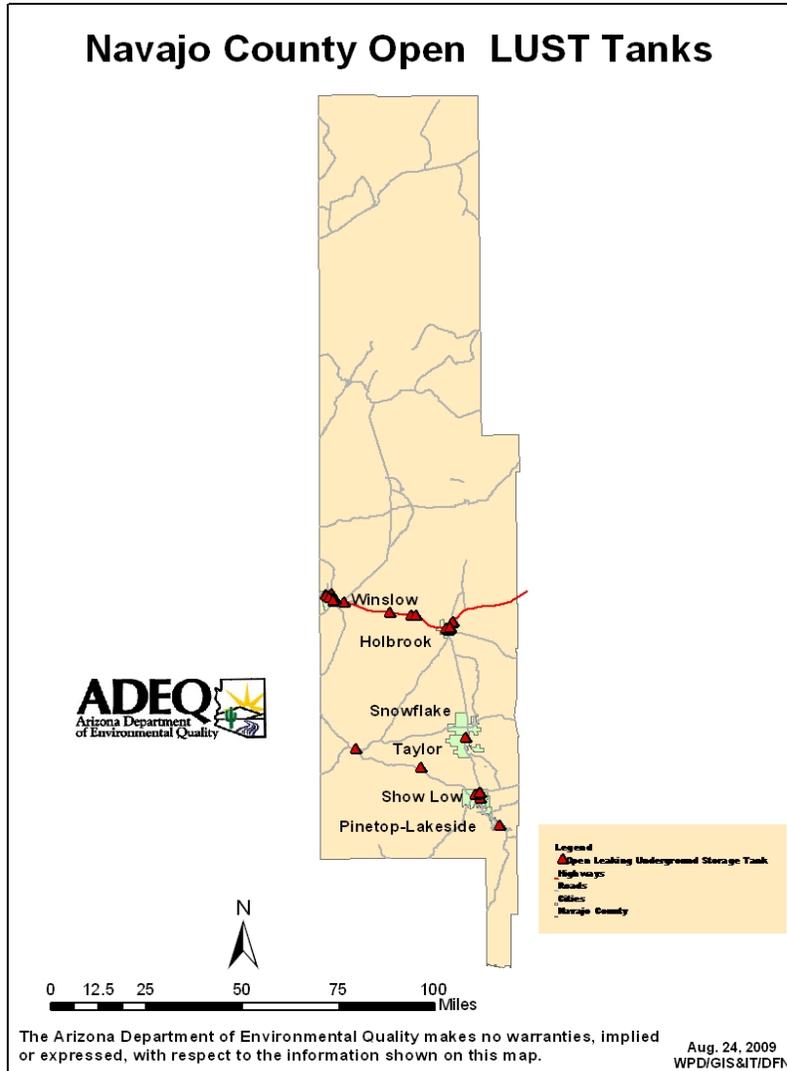
Mohave County Open LUST Tanks



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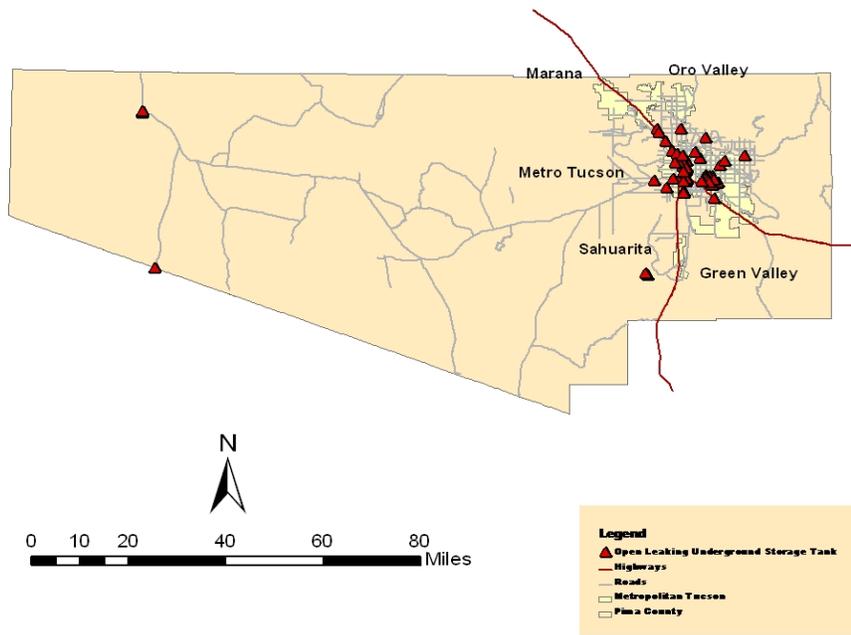
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Navajo County Open LUST Tanks





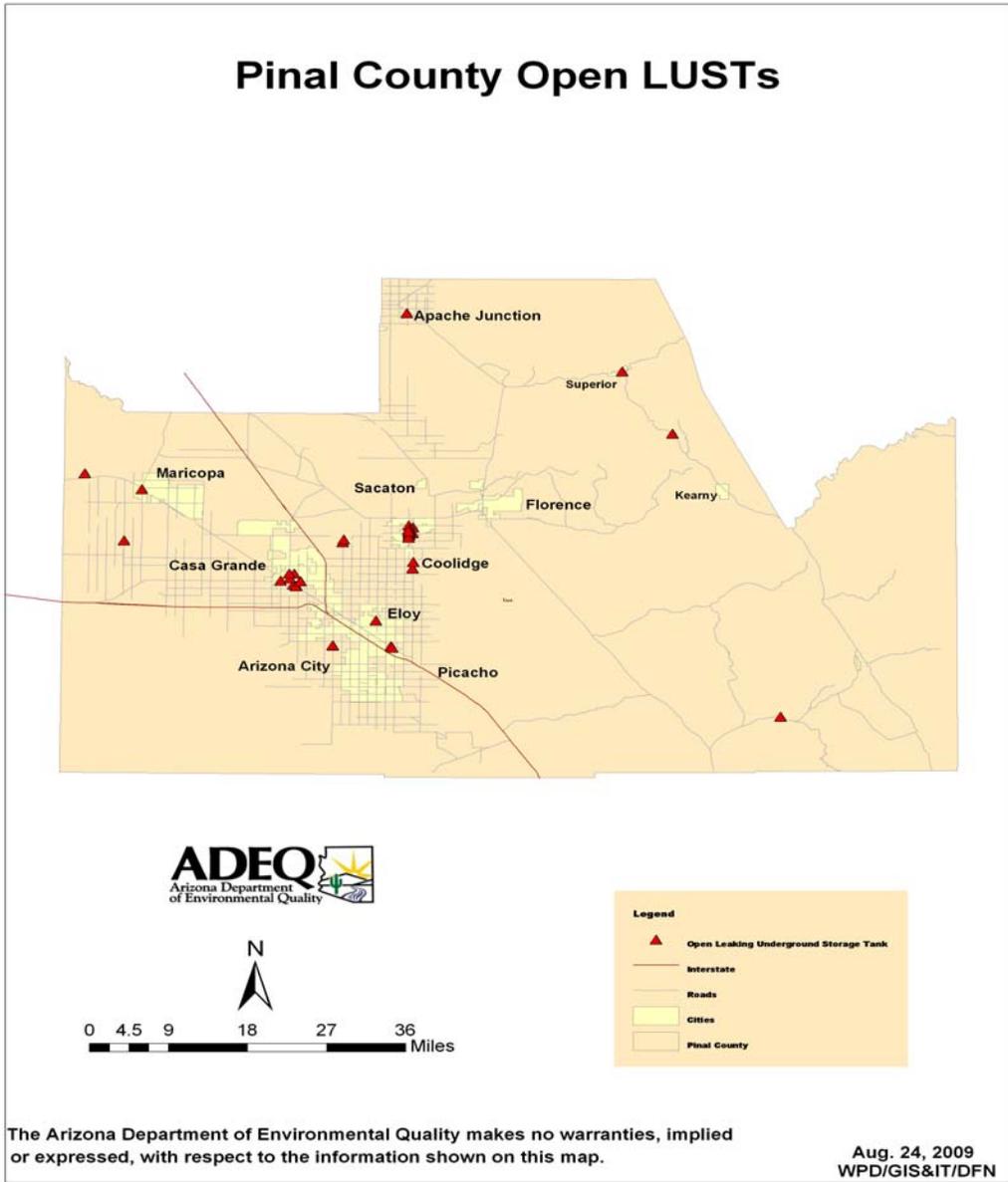
Pima County Open LUST Map



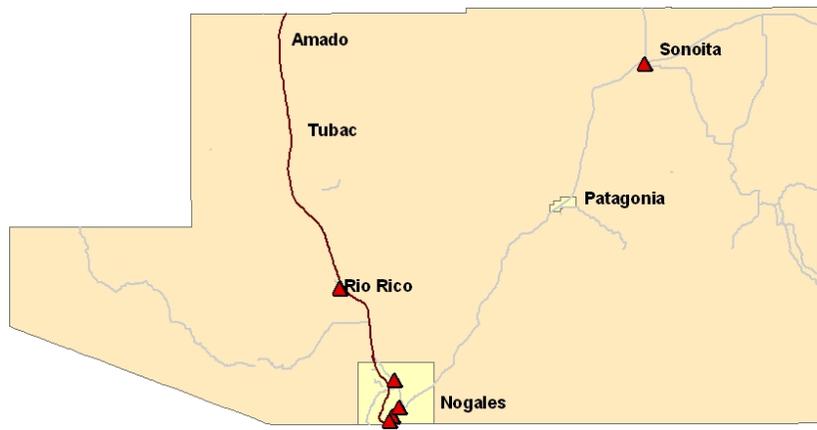
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Pinal County Open LUSTs

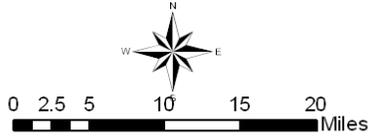


Santa Cruz County Open LUSTs



Legend

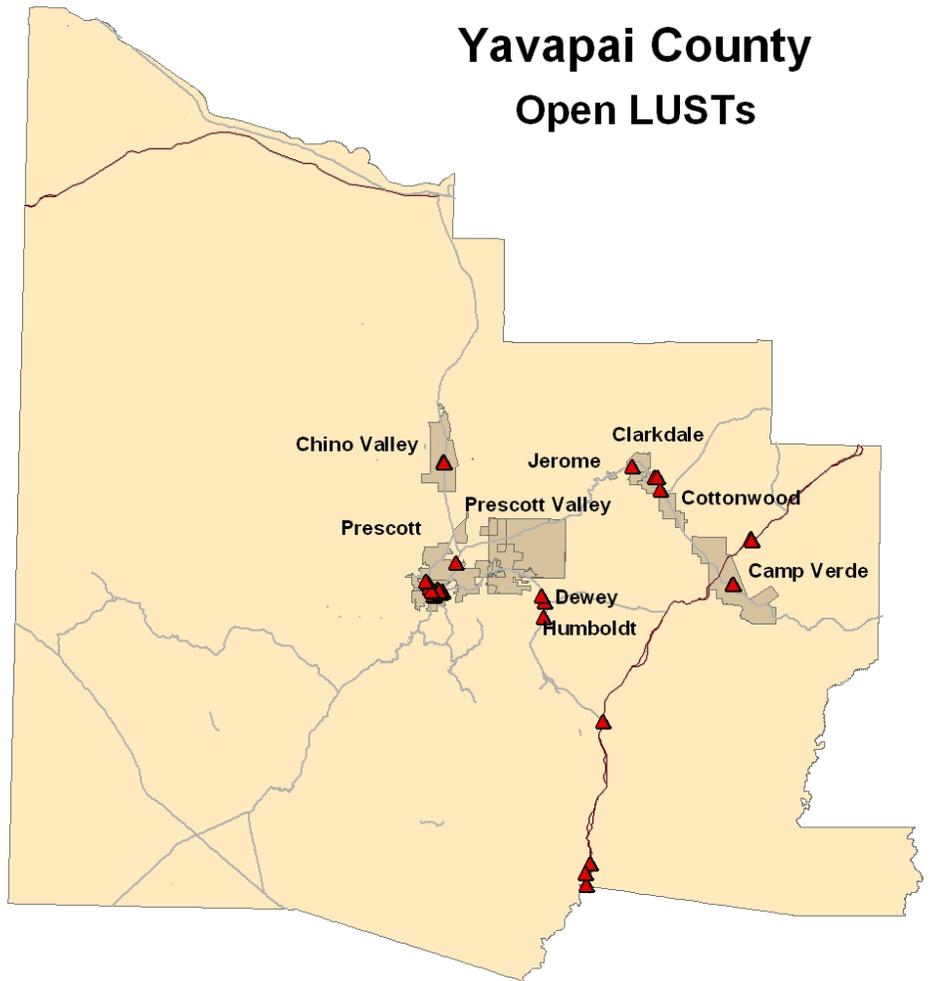
- ▲ Open Leaking Underground Storage Tank
- Interstate Highways
- Roads
- Cities
- Santa Cruz County



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Yavapai County Open LUSTs



Legend

- ▲ Open Leaking Underground Storage Tank
- Highways
- Roads
- Towns
- Yavapai County



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Yuma County Open LUST



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Aug. 24, 2009
WPD DMGUDFN

Attachment 2

SB 1306 IMPLEMENTATION DATES

August 25, 2004:	Effective date of SB 1306 [46 th Legislature, Second Regular Session, 2004]
June 30, 2006:	Last date of SAF eligibility for newly reported releases. [Laws 2004, Ch. 273, Sec. 9]
June 29, 2006:	Last date for consulting rural areas on closing abandoned USTs [Laws 2004, Ch. 273, Sec. 13]
June 30, 2009:	Last date for filing applications for pre-approval. [Laws 2004, Ch. 273, Sec. 9]
September 1, 2009:	SAF liability report submitted by ADEQ. [Laws 2004, Ch. 273, Sec. 10]
June 30, 2010:	Last date for filing SAF direct pay and reimbursement applications. [Laws 2004, Ch. 273, Sec. 9]
June 30, 2010:	Deadline for submittal of MNA - related work plans and Corrective Action Plans [Laws 2004, Ch. 273, Sec. 8]
June 30, 2010:	Last date for SAF applications for payment after this date [Laws 2004, Ch. 273, Sec. 9]
June 30, 2011:	Last date for encumbrance of MNA - related corrective action monies [Laws 2004, Ch. 273, Sec. 12]
July 1, 2011:	SAF balances remaining after payment of all timely submitted claims are transferred to the Regulated Substance Fund [Laws 2004, Ch. 273, Sec. 8]
December 31, 2013:	Latest possible date for funding the RSF and repealing Chapter 6, Articles 2 (Excise Tax) and 3 (SAF) [Laws 2004, Ch. 273, Sec. 14]

ATTACHMENT 3
ADEQ State Assurance Fund (SAF) Analysis
September 1, 2009

UST Revenues

- Approximate SAF balance as of June 30, 2009: \$ 19,486,600
- Approximate UST Tax revenue 7/1/09 to 12/31/13:
(assumes \$29.4 million per year) \$132,300,000
- **Total Projected UST Fund Revenue:** \$151,786,600

SAF Liabilities

- Eligible UST Releases: \$96,850,000

The UST Program currently has 451 facilities that have at least one SAF eligible release. Approximately 345 of those facilities have releases to both soil and groundwater, and 106 have releases that have impacted soil only.

In ADEQ's experience, \$250,000 will be required for a facility at which both soil and groundwater cleanup is required, and \$100,000 for a soil only facility cleanup. The estimated cost to remediate these 451 facilities is approximately \$96,850,000. To be eligible for SAF coverage, Arizona law requires SAF applicants to complete cleanups and submit claims by June 30, 2010.*

- Cost to Administer the SAF/Corrective Action Program: \$27,783,000

Cost to administer the SAF program and implement the corrective action program from June 30, 2009 through December 31, 2013 is approximately \$27,783,000.

- FY2010 Transfers from UST Fund: \$14,653,700

Includes UST Fund transfers prescribed in Chapter 12, House Bill 2643 (49th Legislature, First Regular Session, 2009).

- **Total Projected SAF Liability:** \$139,286,700

Regulated Substance Fund

In 2004, Senate Bill 1306 in Arizona Revised Statute §49-1015.01, and Session Law Section 14 of SB 1306 established the Regulated Substance Fund for ADEQ to continue monitoring groundwater sites not closed before releases become ineligible for SAF on June 30, 2010 and to continue cleanup of orphan UST facilities. Up to a maximum of \$60,000,000 is to be transferred from the SAF to the regulated substance fund after all eligible claims are paid based on SB 1306. Current projections of revenues minus liabilities indicate substantially less will be available for transfer.

Total Projected UST Program Revenue:	\$151,786,600
Total Projected SAF Liability:	<u>\$139,286,700</u>

- **Total Available for Transfer to Regulated Substance Fund** \$12,499,900

* It is unlikely that \$96,850,000 in cleanup work will be completed by owners, operators and volunteers by June 30, 2010 (the deadline for filing SAF direct pay and reimbursement applications). \$96,850,000 is the maximum ADEQ expects to be expended for cleanup.