



UNDERGROUND STORAGE TANK (UST) PROGRAM APPEALS GUIDANCE

(Revised November 2009)

NOTICE OF RIGHT TO INFORMAL APPEAL

To file an informal appeal, you must be an "eligible person" (e.g. owner, operator or volunteer). If you are an eligible person and would like to dispute a written decision or determination from the Arizona Department of Environmental Quality's (ADEQ) UST Program, you have 30 days to file an informal appeal (Arizona Revised Statutes (A.R.S.) § 49-1091). The informal appeal can only address one of the decisions or determinations listed below (A.R.S. § 49-1091(A) and (G)):

1. ADEQ's determination or confirmation of a release.
2. ADEQ's interim decisions of approval, disapproval, or notice of deficiency of the following:
 - a.) A Site Characterization Report (SCR);
 - b.) A Corrective Action Plan (CAP);
 - c.) A work plan;
 - d.) Requests for closing a Leaking Underground Storage Tank (LUST) case file.
3. ADEQ's interim determinations of the following:
 - a.) Owner or Operator status;
 - b.) State Assurance Fund (SAF) pre-approval, direct payment or reimbursement;
 - c.) Allocation of liability.

The informal appeal must be in writing, identify the portions of the interim decision or determination with which you disagree, and explain the basis of your disagreement. You may file the informal appeal using the form titled "Informal Appeal Form - Notice of Disagreement." As part of the informal appeal, you may request a meeting with ADEQ to attempt to resolve the disagreement. If a meeting is requested, ADEQ will contact you within 30 days to schedule the meeting.

If you file an informal appeal, ADEQ will review its interim decision or determination and issue a written final decision or determination within 45 days; or if a meeting has been requested, within 15 days after the meeting is held. If ADEQ does not issue a written final decision or determination within 45 days after receiving your informal appeal, or within 15 days after the meeting described above (whichever date is later), then the interim decision or determination becomes the final decision or determination without further notice to you (see Notice of Right to Formal Appeal below).

If you do not file an informal appeal, the interim decision or determination automatically becomes ADEQ's final decision or determination without further notice to you. In this case, the effective date for the final decision or determination is 45 days after the date that you received the interim decision or determination (see Notice of Right to Formal Appeal below). If you wish to dispute the contents of a letter from ADEQ's UST Program that does not address one of the decisions or determinations listed above, you may be eligible to file a formal appeal.

NOTICE OF RIGHT TO FORMAL APPEAL

An appealable agency action (A.R.S. § 41-1092), which is administratively appealable before the Office of Administrative Hearings (OAH), is an agency action that determines the legal rights, duties or privileges of a party. An appealable agency action also includes an interim decision or determination (A.R.S. § 49-1091) that becomes final.

To obtain an administrative hearing on an appealable agency action, you must file a Notice of Appeal with ADEQ within 30 days of the effective date of the agency action. The effective date is either of the following:

1. Date you receive the written agency action, including final decisions or determinations;
2. Statutorily-determined date that an interim decision or determination becomes a final decision or determination (see Notice of Right to Informal Appeal above).

When filing a Notice of Appeal, it must contain the following information:

1. Your name and mailing address. You must notify ADEQ of an address change within five (5) days after a change.
2. Identification of your status as an UST owner, UST operator, or person voluntarily taking corrective action, pursuant to A.R.S. § 49-1016(C) (4) or § 49-1052(I).
3. Identification of the ADEQ action or final decision or determination that is the subject of appeal.
4. A concise statement of the reasons for your appeal.

You must file the Notice of Appeal with ADEQ. ADEQ requests that the Notice of Appeal be filed at the following address:

Hearing Administrator
ADEQ Office of Administrative Counsel
1110 West Washington Street
Phoenix, Arizona 85007

The Notice of Appeal must be filed by mailing the Notice via certified mail (return receipt requested), or by personally delivering the Notice to the Hearing Administrator. Please send a copy of the Notice of Appeal via U.S. Mail to the Office of the Attorney General, Environmental Enforcement Section Administrative Appeals Desk, located at 1275 West Washington Street, Phoenix, Arizona 85007.

An administrative hearing will typically be held within 60 days after the Notice of Appeal is filed. The OAH will conduct the hearing. If you wish to try to settle the matter before the administrative hearing is held, you may file a request for an informal settlement conference with the Hearing Administrator no later than 20 days before the OAH hearing date. ADEQ will hold the settlement conference within 15 days after receiving the request. Filing an informal settlement request does not toll the OAH hearing date.