



UNDERGROUND STORAGE TANK (UST) STATE LEAD APPLICATION

August 2008

The Arizona Revised Statutes (A.R.S.) enables the UST State Lead Program to conduct leaking underground storage tank investigations and cleanups. This package contains information an UST owner, operator or a property owner who is not a UST owner/operator must submit to ADEQ before they can be considered for the State Lead Program. When completed, the package should be sent to:

UST State Lead Unit Supervisor
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

APPENDIX A

State Lead Statutes

The State Lead statutory sections referenced below can be found at the Arizona Legislative website (ALIS) at:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=49>

A.R.S. §49-1017

The director may take corrective action with respect to a release of a regulated substance that is petroleum into the environment from an underground storage tank if the director determines that action is necessary to protect human health, safety or the environment and any of the following conditions exist:

1. The department cannot locate, within ninety days or a shorter period necessary to protect human health or the environment, a person who is all of the following:
 - (a) An owner or operator of the tank concerned.
 - (b) Subject to the corrective action requirements of section 49-1005.
 - (c) Financially or technically capable of properly carrying out the corrective action required by section 49-1005. If the owner or operator and the department jointly determine that the owner or operator is not financially or technically able to carry out the corrective action and the owner or operator has demonstrated an inability to use an environmental contractor, the department and the owner may enter into a contract under which the department acts as manager of the corrective action on behalf of the owner or operator. The existence of a management contract with the department does not relieve the owner of any liability for costs that are not covered by section 49-1054, subsection A.
2. Corrective action costs at a facility exceed the amount of coverage required by section 49-1006 and, considering the class or category of underground storage tank from which the release occurred, expenditures from the underground storage tank revolving fund are necessary to ensure effective corrective action.
3. The owner or operator has failed or refused to comply with an order of the director under section 49-1013 to take the corrective actions required by section 49-1005.

A.R.S. §49-1018.

The director shall give priority in undertaking state-led corrective actions pursuant to section 49-1017 to releases of regulated substances from underground storage tanks which pose the greatest threat to human health and the environment.

APPENDIX B

Information Required from Applicants Claiming to be Technically Incapable

If you claim to be technically incapable of performing the corrective actions, please submit evidence of your inability to manage a contractor. This may include:

- 1) All correspondence with the consultant or contractor such as agreements, letters, etc.
- 2) A copy of the contract you have with the consultant or contractor.
- 3) A signed affidavit explaining your inability to manage the consultant or contractor.
ADEQ has included an example of an affidavit statement below.

“I <name> do not feel I can manage a consultant or contractor. I do not have a background in engineering or geologic sciences, nor do I understand the technical requirements for performing UST corrective actions.”

APPENDIX C

Information Required from Applicants Claiming to be Financially Incapable

Check-list For Financial Information Settlement Authority A.R.S. §49-1017 & 49-1017.01

An owner or operator applicant seeking settlement pursuant to Arizona Revised Statutes §49-1017.01 shall submit the following to the Department for determination by the Director to carry out the requirements of this section as a condition of the settlement.

1. A letter to the Director requesting a financial hardship settlement under A.R.S. §49-1017.01, for the direct costs (except for those amounts that are eligible for and within the coverage limits provided by A.R.S. §49-1054), incurred by the Director. The letter should also explain why the settlement applicant (defined as an owner or operator), is not financially or technically able to continue to incur the costs of the corrective action any longer through the use of an environmental contractor and request for the Director to act as manager of the corrective action on behalf of the settlement applicant under A.R.S. §49-1017.
2. A reasonable financial settlement offer based on the applicant's ability to pay the direct costs incurred by the Director.
3. For the five (5) years immediately preceding the date of the application, the settlement applicant will submit the following:
 - a. U.S. Tax Returns and all schedules for each year.
 - b. A fiscal year-end personal financial statement for each year.
 - c. An annual income and expense budget for each year.
 - d. A business balance sheet and income statement for each year.
 - e. Any other financial information concerning the settlement applicant's gross income and net worth.
4. The settlement applicant may provide any additional information believed to be relevant to the application.

The Director may require additional information to verify the settlement applicant's eligibility for settlement pursuant to subsection A of A.R.S. §49-1017.01

APPENDIX D

Instructions: Please fill out only one of the following two agreements. If you are the property owner fill out the “Property Owner’s” agreement. If you are the UST owner or operator, fill out the “UST Owner’s” agreement.

**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANK
CORRECTIVE ACTION AGREEMENT
“NON-UST OWNER/OPERATOR PROPERTY OWNER”**

This Corrective Action Agreement ("Agreement") is made this ___ day of _____ 2008 by and between the Arizona Department of Environmental Quality ("ADEQ") and ("Non-UST Owner/Operator Property Owner"). This is a legally binding contract and the applicant is advised to seek the opinion of an attorney before entering into the agreement.

RECITALS:

The following is a recital of the facts underlying this agreement:

“Non-UST Owner/Operator Property Owner” is the person, who currently owns the property or who has principal control of the property located at _____, Arizona, ("Property") on which an Underground Storage Tank ("UST"), as defined by A.R.S. §49-1001.18 is or was located. The “Non-UST Owner/Operator Property Owner” also fulfills the requirements described by A.R.S. §49-1001.01 B.2. A release, as defined by A.R.S. §49-1001.15, of petroleum from the UST occurred on or before _____. "Non-UST Owner/Operator Property Owner" and ADEQ desire that corrective actions required by A.R.S. §49-1005, be carried out at the Property and that ADEQ take such action pursuant to A.R.S. §49-1017.

THEREFORE, the parties ("Parties") to this Agreement, in consideration of the promises and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, agree as follows:

1. **STATE-LEAD CORRECTIVE ACTION.** This matter meets the requirements for ADEQ to take corrective action, pursuant to A.R.S. §49-1017.A and A.R.S. §49-1017.B.
2. **ASSIGNMENT OF SAF REIMBURSEMENT.** “Non-UST Owner/Operator Property Owner ” assigns any right it may have to reimbursement of corrective action costs from the State Assurance Fund ("SAF"), to ADEQ.
3. **SCOPE OF AGREEMENT.** This Agreement does not encompass issues regarding violations, releases, contamination, sources, operations, facilities or processes not expressly covered by the terms of this Agreement, and is without prejudice to the rights of the State of Arizona or “Non-UST Owner/Operator Property Owner ", arising under any federal or Arizona environmental statutes and rules with regard to such issues.
4. **PROPERTY ACCESS.** The Non-UST Owner/Operator Property Owner shall provide to ADEQ all access to the Property necessary to complete the corrective

action as described and incorporated in this Corrective Action Agreement. This right of access shall be in addition to, and not in limitation or substitution of ADEQ's rights of entry or inspection under applicable laws or regulations.

- 5. **CURRENT INFORMATION.** This Agreement is based solely upon currently available information. If additional information is discovered, which indicates that the actions taken under this Agreement are or will be inadequate to protect the human health, safety, or the environment, or to conform with applicable federal or state laws, the ADEQ shall have the right to require further action, beyond the requirements of this Agreement.
- 6. **MODIFICATIONS.** Any modifications of this Agreement shall be in writing and approved by "Non-UST Owner/Operator Property Owner" and the Director of ADEQ.
- 7. **CORRESPONDENCE TO ADEQ.** All correspondence to ADEQ arising as a result of this Agreement shall be mailed to the following address:

Manager, Corrective Action Section
Tank Programs Division
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

- 8. **CORRESPONDENCE TO "Non-UST Owner/Operator Property Owner".** All correspondence to "Non-UST Owner/Operator Property Owner" arising as a result of this Agreement shall be mailed to the following address:

- 9. **AUTHORIZATION.** The undersigned representative of ADEQ certifies that he is fully authorized to execute this Agreement on behalf of ADEQ and to legally bind ADEQ to this Agreement. The undersigned representative of "Non-UST Owner/Operator Property Owner" certifies that he is fully authorized to execute this Agreement on behalf of "Non-UST Owner/Operator Property Owner" and to legally bind "Non-UST Owner/Operator Property Owner" to this Agreement.
- 10. **EXECUTION DATE.** The execution date of this Agreement shall be the date this Agreement is signed by "Non-UST Owner/Operator Property Owner" and ADEQ. If such signatures occur on different dates the latter shall be the execution date of this Agreement.

11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and agreements.
12. **CAPTIONS.** The captions of the paragraphs of this Agreement are for the convenience of reference only and shall not be considered or referred to when resolving questions of interpretation.
13. **SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be found to be invalid, void or unenforceable, the invalidity does not affect the remaining provisions or application of this Corrective Action Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Corrective Action Agreement are severable.

EXECUTED this ____ day of _____, 2008.

"Non UST Owner/Operator Property Owner"

EXECUTED this ____ day of _____, 2008.

Manager, Corrective Action Section
Tank Programs Division
Arizona Department of Environmental Quality

**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANK
CORRECTIVE ACTION AGREEMENT
“UST OWNER OR OPERATOR”**

This Corrective Action Agreement ("Agreement") is made this ____ day of _____, 2008, by and between the Arizona Department of Environmental Quality ("ADEQ") and _____ ("Owner"). This is a legally binding contract and the applicant is advised to seek the opinion of an attorney before entering into the agreement.

RECITALS:

The following is a recital of the facts underlying this agreement:

"Owner" is the owner, as defined by Arizona Revised Statutes ("A.R.S.") §49-1001.01.A, of an Underground Storage Tank ("UST"), as defined by A.R.S. §49-1001.17, located at _____, Arizona ("Property"). A release, as defined by A.R.S. §49-1001.14, of petroleum from the UST was reported on _____, _____. "Owner" and ADEQ desire that corrective actions required by A.R.S. §49-1005 be carried out at the Property and that ADEQ take such action pursuant to A.R.S. §49-1017.

THEREFORE, the parties ("Parties") to this Agreement, in consideration of the promises and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, agree as follows:

1. **STATE-LEAD CORRECTIVE ACTION.** This matter meets the requirements for ADEQ to take corrective action, at the property, pursuant to A.R.S. §49-1017.A.1 (a)-(c).
2. **ASSIGNMENT OF SAF REIMBURSEMENT.** "Owner" assigns any right it may have to reimbursement of corrective action costs, pursuant to A.R.S. §49-1052, from the State Assurance Fund ("SAF"), to ADEQ.
3. **REIMBURSEMENT OF DIRECT COSTS.** "Owner" shall reimburse ADEQ for all direct costs of the corrective action, pursuant to A.R.S. §49-1017.C, as follows:
 - a. "Owner" shall be responsible for 10% of all direct costs pursuant to A.R.S. §49-1054.A, and;
 - b. "Owner" shall be responsible for all direct costs that exceed the amount of SAF reimbursement available, pursuant to A.R.S. §49-1052 and 1054.
 - c. Payment of direct costs shall be made in Accordance with Departmental approved Payment Schedule".
4. **SCOPE OF AGREEMENT.** This Agreement does not encompass issues regarding violations, releases, contamination, sources, operations, facilities or processes not

expressly covered by the terms of this Agreement, and are without prejudice to the rights of the State of Arizona or "Owner", arising under any federal or Arizona environmental statutes and rules with regard to such issues.

5. **PROPERTY ACCESS.** "Owner" shall provide to ADEQ, all access to the Property necessary to complete the corrective action and incorporated in, this Corrective Action Agreement as Addendum A. This right of access shall be in addition to, and not in limitation of or substitution for ADEQ's rights under applicable law.
6. **OBLIGATIONS OF LAW.** Nothing in this Agreement shall in any way alter, modify or revoke federal, state, or local law, or relieve "Owner" in any manner of its obligation to comply with such laws. Compliance with the terms of this Agreement shall be no defense to any action to enforce any such laws.
7. **CURRENT INFORMATION.** This Agreement is based solely upon currently available information. If additional information is discovered, which indicates that the actions taken under this Agreement are or will be inadequate to protect the human health, safety, or the environment, or to conform with applicable federal or state laws, the ADEQ shall have the right to require further action, beyond the requirements of this Agreement.
8. **MODIFICATIONS.** Any modifications of this Agreement shall be in writing and approved by "Owner" and the Director of ADEQ.
9. **CORRESPONDENCE TO ADEQ.** All correspondence to ADEQ arising as a result of this Agreement shall be mailed to the following address:

Manager, Corrective Action Section
Tank Programs Division
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

10. **CORRESPONDENCE TO "OWNER".** All correspondence to "Owner" arising as a result of this Agreement shall be mailed to the following address:

11. **AUTHORIZATION.** The undersigned representative of ADEQ certifies that she is fully authorized to execute this Agreement on behalf of ADEQ and to legally bind ADEQ to this Agreement. The undersigned representative of "Owner" certifies that he is fully authorized to execute this Agreement on behalf of "Owner" and to legally bind "Owner" to this Agreement.

12. **EXECUTION DATE.** The execution date of this Agreement shall be the date this Agreement is signed by "Owner" and ADEQ. If such signatures occur on different dates the latter shall be the execution date of this Agreement.
13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and agreements.
14. **CAPTIONS.** The captions of the paragraphs of this Agreement are for the convenience of reference only and shall not be considered or referred to when resolving questions of interpretation.
15. **SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be found to be invalid, void or unenforceable, then, to the extent the basic intentions of the parties to this Agreement remain unchanged, the remaining provisions and any application thereof shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

EXECUTED this ____ day of _____, 2008.

"UST Owner or Property Owner"

EXECUTED this ____ day of _____, 2008.

Manager, Corrective Action Section
Tank Programs Division
Arizona Department of Environmental Quality

APPENDIX E

APPENDIX E
ACKNOWLEDGEMENT OF STATE LEAD ACTION FOR
OWNERS OR OPERATORS

Please sign to acknowledge that you have read the information below:

If ADEQ has determined that you were the UST owner or operator at the time of the release, the existence of a corrective actions agreement with the department does not relieve you of any liability for the release. Additionally, the existence of a management contract with the department does not relieve you of any liability for costs that are not covered by A.R.S. §49-1054, subsection A. This includes the 10 percent co-payment of the corrective action costs. If the release is not eligible for the UST State Assurance Fund, the owner or operator is liable for all direct costs associated with corrective actions, investigation, enforcement and litigation. If you are financially incapable of paying either the 10 percent co-payment or, if applicable, the direct cost, ADEQ has the authority to negotiate a settlement amount.

ADEQ cannot predict when site work will be started or completed because of a number of factors including:

- 1) When the work can start - The State Lead Program uses human health and environmental risk factors when prioritizing the order in which the UST sites are addressed (see A.R.S. §49-1018). For example, a UST sites with groundwater contamination that has affected a drinking water well would rank higher and be addressed prior to a site with minor soil contamination. Please note that the length of time a UST site is on the list has no bearing on the site's ranking.
- 2) The location and magnitude of the release – A small release that is located in easily accessible shallow soil may be cleaned up in one day whereas a large release that has resulted in extensive groundwater contamination may take years to clean up.

ADEQ has created a website that contains a list of UST sites that have been accepted into the State Lead Program. The site may be access through the following link:

<http://www.azdeq.gov/environ/ust/index.html>

Signature: _____

Name (Print): _____

Date: _____