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Web site: www.azdeq.gov/environ/ust/index.html

Commentary

by *Joseph Karl Drosendahl*

Manager of the Corrective Action Section

After June 30, 2006, any new release from an underground storage tank (UST) that is reported to ADEQ will not be eligible for the State Assurance Fund (SAF). This means that the UST owner or operator will be responsible for paying the corrective action costs for new releases, just like it was back in July 1987 when I first started with the ADEQ UST Program. But that's where the similarities end.

The Arizona UST Program was created on April 29, 1986, when Governor Bruce Babbitt signed House Bill 2072 into law. The UST statutes at that time were just seven pages, and that was using large letters! Back in 1987, there was just a handful of hydrologists and compliance officers, plus an intern (that would be me). The number of reported leaking USTs (LUST) was only about 200 (the LUST case files fit into just one four-drawer filing cabinet), and the number reported each month was climbing fast. In the early years of the UST Program, the methods available to UST owners and operators for investigating and remediating UST releases were few and it was still accepted practice to collect soil samples in jars.

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The USTNews newsletter and other correspondence can be delivered to you by e-mail. If you would like to be on the e-mail list, please provide your e-mail address at: <http://www.azdeq.gov/environ/ust/outreach/index.html>.

You may also contact **Cynthia Miller** at (602) 771-4321 or (800) 234-5677 Ext. 771-4321.

There was also no ADEQ corrective action guidance for UST stakeholders, and the only clean-up levels for soil and groundwater were guidance levels that were not enforceable.

A lot has happened since 1987. Not only do we have federal regulations, but now the Arizona UST statutes are 31 pages in length (using smaller letters), and we also have the corrective action rules. The number of reported LUSTs has increased to about 8,200 (the LUST case files now have to be stored in a separate fileroom), but luckily 80% of them are closed. ADEQ has created several guidance documents and computer software to assist UST owners and operators in complying with the UST regulations. All of them are free and readily available on the Tank Programs Division's Web site (www.azdeq.gov).

Prior to creation of the State Assurance Fund (SAF), owners and operators had to use their own funds or insurance to conduct investigation and cleanup of a release. Naturally, many owners and operators had difficulty meeting the regulatory requirements. Besides the SAF, several other programs were created to deal with the UST sites that fell through the "regulatory cracks" of the initial UST statutes. These include the State Lead Program, where ADEQ performs corrective actions at orphan USTs or when the UST owner is unable or unwilling, and the County and Municipal Tank Closure Program (MTCP) that enables ADEQ to remove orphan USTs in certain areas and perform corrective actions when appropriate.

As you can see, a lot of changes have occurred in the UST corrective action program since I became involved back in 1987, but there is always room for improvement. The program is committed to continuing to communicate with UST owners and operators and to provide them with assistance in complying with their regulatory requirements that protect the public's health and the environment from UST releases. Throughout the years there have been a lot of people (internal and external) that have contributed in making the UST corrective action program what it is today. Stay tuned to see what happens in the next 20 years.

The New Federal Energy Policy Act May Affect UST Owners and Operators

President Bush signed the Energy Policy Act of 2005 into law on August 8, 2005. Contained within the Energy Policy Act is the Underground Storage Tank Compliance Act that focuses on preventing UST releases. This new law affects not only U.S. EPA's and ADEQ's UST programs, but it also has an effect on all UST owners and operators.

The Act includes provisions regarding UST inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of leaks that contain oxygenated fuel additives, such as MTBE. Some of these provisions require implementation by August 2006. Based on input from Arizona and other states, the U.S. EPA is currently developing guidance for the states on implementation of the mandated changes.

If you have questions or want more information, please call Ronald Kern at (602) 771-4242, or at (800) 234-5677 Ext. 771-4242, or by e-mail at rak@azdeq.gov. You may also find more information on the requirements and their implementation dates on ADEQ's Web site at <http://www.azdeq.gov/environ/ust/saf/download/1653.pdf>

Financial Responsibility (FR)–Make sure you have it!

As an owner or operator of a UST system, you must have a current financial assurance mechanism to be in compliance with state and federal financial responsibility (FR) requirements. FR means having the financial ability to address costs of corrective actions or third-party liability claims associated with releases of petroleum from your UST systems.

Although the State Assurance Fund (SAF) currently covers up to the first \$500,000 of eligible corrective action costs, it does not provide for complete compliance with FR requirements. Furthermore, the SAF cannot be accessed for releases reported after June 30, 2006. This has two significant impacts: (1) UST owners and operators will be dependent on their FR mechanisms to pay for needed corrective actions after that date; and (2) the SAF cannot be used for compliance with any state and federal FR requirements after that date.

Among the many FR mechanisms allowed, UST pollution liability insurance is the most commonly selected option. UST owners and operators are encouraged to contact their insurance agent or broker prior to June 30, 2006 to obtain adequate insurance coverage to be in compliance with federal and state FR laws. If you have questions or want more information, please call ADEQ's UST Financial Responsibility Coordinator, Maria Rodriguez, at (602) 771-2214, or at (800) 234-5677 Ext. 771-2214, or by e-mail at mmr@azdeq.gov. You may also find more information on ADEQ's Web site at: www.azdeq.gov/environ/ust/fr.html.

Suspected Releases, Releases and the State Assurance Fund (SAF)

Underground Storage Tank (UST) releases reported after June 30, 2006, will not be eligible for coverage by the

State Assurance Fund (SAF). In other words, to be eligible for the SAF, owners or operators must report confirmed releases before the close of business on June 30, 2006.

What is a suspected release?

A suspected release can result from discovery of a regulated substance in the environment in the vicinity of a UST system. Erratic behavior of the UST system dispensing equipment; loss of regulated substances from the UST system; unexplained water in the UST system; anomalous release detection information; or other unusual conditions potentially related to the UST system.

What is a confirmed release?

A confirmed release is the discovery of free product or analytical sample results that links the presence of a regulated substance to a component of a UST system. If this occurs and is adequately documented by the UST owner or operator through a site check, UST permanent closure assessment, or a suspected release investigation, then the UST owner or operator has confirmed the release.

Remember that only **confirmed releases** reported to ADEQ prior to the close of business on June 30, 2006, are eligible for SAF coverage. Regardless, both releases and suspected releases must be reported to ADEQ within 24 hours of discovery and followed up with submittal of a 14 day report.

If you have questions, you may access the ADEQ Web site at: <http://www.azdeq.gov/environ/ust/index.html> or, call Al Johnson at (800) 234-5677 Ext. 771-4268, or (602) 771-4268 or by e-mail at: aej@azdeq.gov.

Temporary Tank Closure – What you should know

Temporary underground storage tank (UST) closure is an option for the owner or operator who desires to discontinue operation of their UST systems for a short period of time and then start up operation again at a later date.

Temporary closure can begin at any time, but a *Notification for Underground Storage Tanks Form* must be submitted to ADEQ within 30 days after beginning temporary closure to let ADEQ know that the USTs have been put into temporary closure. USTs may be temporarily closed for up to 12 months, although you must typically still address appropriate leak detection and corrosion protection requirements.

At least 2 or 3 months prior to the end of the 12 month temporary closure period, the UST owner or operator should decide if:

- (1) the USTs are no longer needed and will be permanently closed; or
- (2) temporary closure is needed for a little longer beyond the initial 12-month period; or
- (3) the USTs are ready to be brought back into service.

Regardless of your decision, you should be aware of the regulatory requirements specific to each option.

If you have questions or want more information, please call ADEQ's UST Inspection and Compliance Unit

Manager, Nick Velasquez, at (602) 771-4315, or at (800) 234-5677 Ext. 771-4315, or by e-mail at: nlv@azdeq.gov.

You may also find additional information on UST temporary and permanent closures on ADEQ's Web site at: <http://www.azdeq.gov/environ/ust/download/brochure/close.pdf>

The County and Municipal Tank Closure Program Can Help Communities Rid Themselves of Abandoned USTs

The County and Municipal Tank Closure Program and Corrective Action Program (CMTCP) is a state-funded program to assist residents, businesses and government entities in small cities and towns with the removal of abandoned underground storage tanks (USTs) and cleanup of associated contamination. Funds are available through CMTCP for the removal of abandoned USTs.

Initiated by the legislature in 2001, the CMTCP assists unincorporated areas of counties or incorporated cities and towns with populations of less than 15,000 people. The CMTCP promotes community development by removing unwanted, orphaned USTs. Many qualified cities and towns throughout Arizona have partnered with local property owners to identify and remove abandoned USTs through this program.

The Arizona Department of Environmental Quality administers the program, conducts the tank removal and any required contaminant cleanup, and even reimburses the county, city or town for CMTCP application costs. Since 2001, this program has removed over 100 USTs.

If your community is aware of orphaned USTs and wants to take advantage of this program, the department is interested in helping you. For additional information or a copy of the CMTCP application, please contact Michael Latin at (602) 771-4308, or at (800) 234-5677 Ext. 771-4308, or by e-mail at: mrl@azdeq.gov.

Nonmetallic Underground Piping for Flammable Liquids (UL 971)

Because some thermoplastic flexible piping in Underground Storage Tank (UST) systems has had compatibility problems with petroleum fuels in the past, Underwriters Laboratory (UL) revised their standard for Nonmetallic Underground Piping for Flammable Liquids (UL 971). This revised standard became effective on July 1, 2005. Currently, there are six manufacturers with piping products that have been approved by Underwriters Laboratory.

Although ADEQ's UST regulations require that the tank and piping are designed to prevent releases and are compatible with the regulated substance in the UST system, ADEQ does not stipulate the type of material used in construction of the UST system. The fire authorities, however, do have regulations under the fire codes that mandate specific standards for tank and piping construction.

If you have questions about piping or tank standards under the fire codes, please contact the appropriate fire authority:

Arizona State Fire Marshal	(602) 364-1080
Phoenix Fire Department	(602) 262-6771
Tucson Fire Department	(520) 791-4014

SAF UPDATE

State Assurance Fund Rules Are Approved

On April 4, 2006, the new Underground Storage Tank UST State Assurance Fund (SAF) Rules were approved by the Governor's Regulatory Review Council by a vote of 5 to 1. The rules will go into effect June 4, 2006. ADEQ will conduct outreach and training on the rule in the near future so check ADEQ's Web site for the date and time. The rules will be published on the Arizona Secretary of State's Web site at: http://www.azsos.gov/public_services/rules.htm

Important Dates for the State Assurance Fund

During the 2004 legislative session, the Governor signed into law Senate Bill (SB) 1306. This bill includes some significant reform to the State Assurance Fund (SAF) that may impact many of our customers. Some of these changes have occurred recently and others will be happening soon:

July 1, 2005

- ▶ A new SAF cost schedule became effective, and all previous cost schedules were repealed.
- ▶ Cleanup volunteers are now required to be pre-approved for SAF claims beyond \$100,000 at a single facility.

December 31, 2005

- ▶ ADEQ does not accept an SAF application for less than \$5,000, except in specific circumstances.

June 30, 2006

- ▶ Only releases from USTs that are reported on or before this date are eligible for SAF coverage. For all releases reported after this date, UST owners and operators will be responsible for all costs of corrective actions.

If you have questions about SB 1306 and the SAF changes coming soon, please contact: Tara Rosie via e-mail: rosie.tara@azdeq.gov or (602) 771-4725, or you may call our toll free number: (800) 234-5677, Ext. 771-4725.

UST Policy Commission 2006 Meetings

The UST Policy Commission is composed of Governor-appointed individuals who represent various groups within the UST Stakeholder community. The Commission and its subcommittees are tasked with reviewing and providing recommendations to improve the UST program which has included reviewing policies and rules. The Commission has both financial and technical subcommittees which explore issues in detail before forwarding them to the Commission. If you wish to contact one of the representatives, please use the table on the back page.

More information can be found on the ADEQ Web site at: <http://www.azdeq.gov/environ/ust/commission/index.html>

UST POLICY COMMISSION MEMBERSHIP		
NAME	REPRESENTATIVE	PHONE
Myron Smith	Owner/Operator with greater than 100 USTs	(602) 728-6986
Karen S. Gaylord	Owner/Operator with less than 10 USTs	(602) 801-9075
Philip McNeely	ADEQ Representative	(602) 771-7645
Tamara Huddleston	Attorney General's Representative	(602) 542-8528
Gail Clement, Chair	Representative of public w/environmental experience	(480) 314-9499
Theresa Foster	City representative	(602) 534-2608
Harold Gill Vice Chair and Chair, Technical Subcommittee	Representative of environmental consultants	(480) 755-8201
Jon Findley	Representative of environmental organization	(480) 756-2916
Andrea Martincic Chair, Financial Subcommittee	Owner/Operator with 10 - 100 USTs	(480) 460-1561
Michael O'Hara	Representative of the public w/experience in finance or insurance matters	(623) 516-9557
Cynthia S. Campbell	Environmental attorney (not employed by the state)	(480) 614-8796

CORRECTIVE ACTION - Case Management

Many of the leaking UST (LUST) sites have been assigned to specific ADEQ case managers. If you are interested in finding out who your case manager is, call the UST help desk at (602) 771-4303, or, (800) 234-5677 Ext. 771-4303.

TPD OUTREACH
Upcoming Events:
TPD Program Conference
coming October 17, 2006