

## Recent Tank Programs Division Developments

September 2004

### New Underground Storage Tank Legislation takes Effect on August 25, 2004

Two significant pieces of underground storage tank (UST) legislation, House Bill (HB) 2651 and Senate Bill (SB) 1306, were recently signed into law by the Governor. Both bills are effective August 25, 2004 and bring substantive changes to the UST Program at ADEQ.

The bills will also impact many of our customers, so we want to provide you with a brief summary of the bills and contact information if you need further assistance.

**HB 2651** expands the Municipal Tank Closure and Corrective Action Program (MTCP) to include unincorporated areas of counties. This program assists property owners by allowing ADEQ to handle abandoned (orphan) USTs through permanent closure and corrective actions to clean up releases, where necessary. The MTCP has been instrumental in helping communities revitalize properties for economic development by permanent closure of more than 50 USTs in cities and towns throughout Arizona. More details about the enhanced MTCP are provided later in this newsletter, and HB 2651 may be viewed online at the state's legislative web site:

[http://www.azleg.state.az.us/documentsForBill.asp?Bill\\_Number=b2651](http://www.azleg.state.az.us/documentsForBill.asp?Bill_Number=b2651)

(Note: the "House Engrossed Version", either in HTML or PDF format, is the correct version).

**SB 1306** has some requirements that go into effect immediately on August 25, 2004. The following is a brief summary of provisions that are effective on August 25, 2004:

1. The State Assurance Fund (SAF) covers up to the first \$500,000 of eligible corrective action costs for all UST owners and operators regardless of their financial responsibility mechanisms. This provision is retroactive to December 31, 2002. This does not negate the federal and state requirement for each owner and operator to have current and adequate financial responsibility to cover the costs of corrective actions and third-party liability claims for all of their USTs.
2. The SAF can pay for soil cleanups to residential standards, even though the site may be used for non-residential purposes.
3. To expedite remediation of contamination, the SAF will pay for contaminant source control and removal.
4. The SAF pays only for a report required in rule and only if it is approved by ADEQ.
5. Cleanup volunteers are liable for a ten percent SAF co-payment for corrective actions, unless the co-pay amount of the reimbursement or direct pay application exceeds the assessed valuation of the real property, or the volunteer opts to have the State Lead program conduct the cleanup.

6. Certification of payment of the SAF co-pay amount will be required of all owners, operators and cleanup volunteers.
7. Cleanup volunteers now have informal appeal rights if ADEQ does not make a timely written interim determination on an SAF application.

Additionally, SB 1306 includes some significant reform to the SAF that will be phased in over the next six years. Between now and June 30, 2010, SB 1306 provides for phasing out eligibility to the SAF and eventual termination of the SAF entirely. The following is a brief summary of provisions of SB 1306 and their effective dates:

#### July 1, 2005

- ▶ A new SAF cost schedule will become effective, and all previous cost schedules will be repealed.
- ▶ Cleanup volunteers will be required to be preapproved for SAF claims beyond \$100,000 at a single facility.

#### December 31, 2005

- ▶ ADEQ will 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, owners and operators will be responsible for all costs of corrective actions.

#### June 30, 2009

- ▶ All SAF preapproval applications must be submitted to ADEQ no later than this date.

#### June 30, 2010

- ▶ All other SAF applications (reimbursement and direct payment) must be submitted to ADEQ no later than this date. No SAF application will be accepted by ADEQ after this date.

SB 1306 may be viewed online at:

[http://www.azleg.state.az.us/DocumentsForBill.asp?Bill\\_Number=sb1306](http://www.azleg.state.az.us/DocumentsForBill.asp?Bill_Number=sb1306)

(Note: the "House Engrossed Version", either in HTML or PDF format, is the correct version).

If you have questions about either HB 2651 or SB 1306, please contact Al Johnson via email at [johnson.allen@azdeq.gov](mailto:johnson.allen@azdeq.gov), or by telephone at (602) 771-4268, or you may call our toll free number at (800) 234-5677.

## **ADEQ Continues its Efforts to Ensure that UST Owners are Familiar and Compliant with Financial Responsibility Requirements**

In June 2003, ADEQ implemented a focused compliance assistance program to inform UST owners and operators of the federal and state requirements for Financial Responsibility (FR). In October 2003, the Underground Storage Tank (UST) Program began initial compliance efforts by informing almost 500 individual owners that ADEQ had no documentation of their compliance with FR requirements.

Based on these initial efforts, ADEQ recognized an increase in the FR compliance rate from 52 percent of UST facilities in October 2003 to 62 percent in January 2004. Although this is a significant increase in compliance, ADEQ intends to seek full FR compliance of all UST owners and operators by using a range of its authorities, including more formal enforcement, if necessary, on a case-specific basis.

Please remember that FR is a state and federal requirement for UST owners and operators to have the monetary means to handle the costs of corrective actions and third-party liability claims (property and bodily injury) related to releases from their UST systems. Even though Senate Bill 1306 provides that the State Assurance Fund (SAF) now covers up to the first \$500,000 of eligible corrective action costs, this does not provide for complete compliance with FR requirements.

Although several FR mechanisms are allowed, UST pollution liability insurance is the most commonly selected option. UST owners and operators may want to contact their insurance agent or broker to evaluate coverages and costs. If you have questions or want more information, please call ADEQ's Financial Responsibility Coordinator at (602) 771-2214, or at (800) 234-5677, extension 771-2214. You may also find more information on FR requirements on our web site at: [.azdeq.gov/envIRON/ust/fr.html](http://.azdeq.gov/envIRON/ust/fr.html).

## **The Municipal Tank Closure and Corrective Action Program (MTCP) expands to include Counties**

The Governor has signed into law House Bill (HB) 2651 which expands the current Municipal Tank Closure and Corrective Action Program (MTCP) to include unincorporated areas of the counties. Previously, in August 2001, the Arizona Legislature created a state program that allows incorporated cities and towns with populations of less than 15,000 to be eligible for state funding to close underground storage tanks (UST) that are within the jurisdiction of the Arizona Department of Environmental Quality (ADEQ). The change took effect on August 25, 2004.

To date, the MTCP has been instrumental in helping communities revitalize properties for economic development by permanent closure of more than 50 USTs in cities and towns throughout Arizona.

Under the new MTCP, the fund may be used to close USTs in counties, cities or towns with eligible USTs. Eligible USTs are those that either do not have an owner or the owner cannot be located.

If a county, city or town is interested in the program, it should submit an application for eligibility to ADEQ, and ADEQ will then

evaluate the application for inclusion in the MTCP. After ADEQ has approved the application for the selected site, the ADEQ UST State Lead Program will perform the UST closure(s) and, if necessary, may perform the corrective actions. In addition to addressing the costs associated with tank closure and corrective action, ADEQ can also reimburse a county, city or town up to \$15,000 of the total costs for compiling the information needed for preparation of all successful applications.

ADEQ will address the applications on a first-come-first-served basis and respond within 120 days from receipt of the application with a determination whether the submitted sites are eligible for the program. When ADEQ has completed closure of the eligible UST(s) and, if required, corrective actions, ADEQ will issue a letter to the affected persons and the county, city or town indicating that the requirements of this program are met.

If your town is interested and you would like more information, or simply would like to schedule a meeting related to the MTCP, please contact Al Johnson via email at: [johnson.allen@azdeq.gov](mailto:johnson.allen@azdeq.gov), or by telephone at (602) 771-4268, or you may call our toll free number at (800) 234-5677.

## **ADEQ Begins a Program to Identify and Clean Up Sites with UST Releases in Rural Arizona**

The Tank Programs Division has launched an initiative to assist UST owners, operators and cleanup volunteers with the identification, cleanup and closure of as many releases as possible prior to the termination of the State Assurance Fund. We will begin the initiative by focusing our efforts in the cities of Holbrook and Winslow. In the future, this initiative may be extended to other rural cities and towns.

The goal of the program is ultimately to reduce the risks to public health and the environment associated with these old tanks and their contaminant releases. In so doing, the initiative will contribute to revitalization of Holbrook, Winslow and other communities, as well as to an increase in local property values.

The success of this program will depend on effective communication and cooperation among ADEQ, tank owners, operators, and cleanup volunteers, their consultants, local officials, and the people living in these communities. ADEQ plans to communicate the current status of the initiative through its website and newsletters. ADEQ is currently scheduling meetings to provide information and discuss options with local officials, as well as UST owners, operators and cleanup volunteers.

The following is a partial list of contacts at ADEQ who are working on the initiative. Please contact us if you have any questions.

ADEQ Project Manager Bill Engstrom	602-771-4309
UST Outreach Coordinator Al Johnson	602-771-4268
Local ADEQ Point of Contact Byron James	928-337-3565

## ADEQ Reorganizes the Underground Storage Tank Program into One Division

Effective August 2, 2004, ADEQ Director Steve Owens changed the organizational focus and emphasis on the Underground Storage Tank (UST) and State Assurance Fund (SAF) programs by creating the new Tank Programs Division. The new Division is headed by Philip McNeely, who managed the UST Corrective Action Section at ADEQ from 1998 to 2000, and has overseen the state Superfund program since then.

As discussed in more detail in this newsletter, the Arizona Legislature passed Senate Bill 1306, which makes some major changes in the UST Program. To enable the Department to implement SB 1306 effectively and to reinforce the Department's efforts to clean up contamination released from USTs, Director Owens created a separate division.

The new Tank Programs Division consists of the SAF Section, moved from the Administrative Services Division, and the UST Corrective Action Section and UST and Division Support Section, moved from the Waste Programs Division. As part of this reorganization, Joe Drosendahl has been appointed manager of the Corrective Action Section, Judy Navarrete is manager of the SAF Section, and Ron Kern is manager of the UST and Division Support Section.

If you have questions about the UST or SAF programs or the new Tank Programs Division, please contact Al Johnson via email at [johnson.allen@azdeq.gov](mailto:johnson.allen@azdeq.gov), or by telephone at (602) 771-4268, or you may call our toll free number at (800) 234-5677

## State Assurance Fund (SAF) Section is Developing New Rules

As part of an ongoing process to update and improve the Underground Storage Tank (UST) program at ADEQ, and because of changes required by Senate Bill 1306, the SAF Section is revising its rules. The rules will better describe the business information requirements of the SAF Section. We want you to be aware of the rule development process because these rules will impact all of our customers with UST releases who access the SAF for coverage of corrective action costs.

If you would like to view the current rules, these may be

accessed online at: [www.azsos.gov/public\\_services/Title\\_18/18-12.htm](http://www.azsos.gov/public_services/Title_18/18-12.htm) (Note: the SAF rules are in Arizona Administrative Code, Title 18, Chapter 12, Article 6, Rules R18-12-601 through R18-12-610).

At this time, ADEQ proposes the following timelines (see table on next page), which are subject to change, in development of the new SAF rules.

During the open comment periods, all comments must be provided in writing to Judy Navarrete, SAF Administrator at:

Arizona Department of Environmental Quality  
Attn: Judy Navarrete  
1110 W. Washington Street  
Phoenix, Arizona 85007

If you have questions about the proposed SAF rules or the rule-making process, please contact Judy Navarrete via email at: [navarrete.judy@azdeq.gov](mailto:navarrete.judy@azdeq.gov) or by telephone at (602) 771-4815, or you may call our toll free number at (800) 234-5677.

## ADEQ is Developing RBCA Tier 2 Software

ADEQ has contracted to have software developed to assist UST stakeholders in performing Tier 2 risk evaluations in accordance with the risk-based corrective action (RBCA) rules. Once completed, the software will be free of charge to stakeholders and the public. For additional information please contact Ren Willis-Frances at (602) 771-4109, or toll-free at (800) 234-5677, ext 771-4268. The following is the current software development schedule:

August 6, 2004	First draft submitted to ADEQ for testing
Late September 2004 *	Revised draft to be submitted to ADEQ for testing
November 2004 *	Final version to be available for public distribution. Users Manual to be available for public distribution.
November 2004 *	Internal and external training (TBA)

\* dates are tentative unless specifically stated.

DATES	MILESTONES
October 1, 2004	Draft rules provided to public for next 30 days for informal written comments
November 1, 2004	Informal written comments are due to ADEQ
November 17, 2004	Proposed forum to address informal written comments - UST Policy Commission meeting
Early December 2004	Notice of proposed rule making in Arizona Administrative Register; beginning of 45 day formal written comment period
Early January 2005	Oral proceeding on proposed rule
Mid January 2005	Formal written comments are due to ADEQ
Mid March 2005	ADEQ submits SAF rule package to the Governor's Regulatory Review Council (GRRC)
Mid June 2005	Approval of SAF rule package by GRRC; ADEQ intends to request that the rules become effective immediately upon approval by GRRC

## EPA has Authority to Fine Tank Owners for Violations Observed during an Inspection

The United States Environmental Protection Agency (EPA) has federal authority to enforce underground storage tank (UST) laws. Although, ADEQ has a cooperative agreement with EPA to implement the UST program in Arizona, ADEQ and EPA frequently coordinate on facility inspections.

What some UST owners and operators do not know is that EPA has the authority to fine tank owners or operators at the time of inspection for violations of UST operational requirements. ADEQ wants to ensure that UST owners, operators, and other interested persons are aware of EPA's field citation authority. Additional information on EPA's field citation directive and potential penalty amounts may be viewed on EPA's web site at:

<http://www.epa.gov/OUST/directiv/od961016.htm>  
[field citation directive]

<http://www.epa.gov/OUST/directiv/apnc1016.htm>  
[potential penalty amounts]

For more information on ADEQ's UST inspections program, please contact Nick Velasquez via email at: [velasquez.nick@azdeq.gov](mailto:velasquez.nick@azdeq.gov), or by telephone at (602) 771-4315, or you may call our toll free number at (800) 234-5677.

## ADEQ's Annual UST Conference

On October 5, 2004, ADEQ will hold its annual Underground Storage Tank (UST) Conference, from 8:00 a.m. to 5:00 p.m., at the Arizona Department of Transportation Human Resource Development Center, 1130 N. 22nd Avenue, Phoenix, AZ 85009. This year's conference is for everyone who is interested in learning more about updates and focus of the new Tank Programs Division at ADEQ. Highlights will be presentations with information on new legislation, program reorganization, UST financial assurance, corrective actions, the State Assurance Fund (SAF), and how these issues may affect you and your business. Our goal is to educate and inform our customers to ensure compliance with Arizona's regulatory requirements.

You may preregister at:

<http://www.azdeq.gov/environ/tpd/seminar.html>,  
by September 28, 2004, or by calling (602) 771-4282.