



ADEQ UST/LUST PROGRAM OPTIONS

2014 Stakeholder Meeting – November 6, 2014



- **Review of program options**
- **Open discussion**
- **Next Steps**



- **Brainstorm session**
 - Established goals
 - Evaluated program options
 - Features
 - Required regulatory changes
 - Pros/Cons
 - Evaluate against goals



- **Protect Human Health and the Environment**
 - Corrective actions (cleanup)
 - Leak prevention

- **Financial viability**
 - Proposed new program components
 - Regulatory program

- **Sunset tax**



Overall Options

1. Full FR Mechanism
2. Partial FR Mechanism (Excluding 3rd Party)
3. Reinsurance Mechanism
4. Expanded State Lead + Federal FR Standards
5. Standardized Policy (Current Legislation)



Summary

- ADEQ will act as a primary insurer
- ADEQ will collect premiums, pay claims subject to deductibles
- State lead remains, but with narrowed scope
- Could operate as sole provider or as part of market with private insurance mechanism

Key Issues / Features

- EPA approval needed
- New authority needed for ADEQ
- “Forever” solution
- Retro dates issue potentially unresolved
- Legacy contamination potentially unresolved

Summary

- Basically the same as Option 1, except this would exclude 3rd party liability

Key Issues / Features

- Basically the same as Option 1, except that it avoids issues associated with 3rd party liability claims

Option 3: Reinsurance Mechanism

Summary

- ADEQ will act as a reinsurer to commercial market
- ADEQ contracts with a set of primary insurance providers
- ADEQ shares costs with primary insurers for first-party claims
- Goal is to improve coverage and affordability of insurance through private market mechanisms
- State lead remains as a safety net

Key Issues / Features

- Aging tank universe may make premiums rise out of control
- Difficulty ensuring leaks are covered – Standardize policies (required)
- Low staffing requirements
- Need to perform claim audits
- “Forever” program

Summary

- Comply with Federal FR requirements across the board
- State would take over in case of denials of coverage
- Primary insurance remains in place
- State lead could expand to include *other than* corrective action (e.g., confirm releases)
- ADEQ would set eligibility standards for state lead coverage

Key Issues / Features

- ADEQ would need authority to subrogate if need arises
- Not a forever program
- State lead could subsidize upgrades - repairs & replacements

Summary

- Policy as stated in current legislation
- Baseline assessments
- Subsidization of UST removals
- Corrective actions for releases identified this way
- Coverage of “gap” claims

Key Issues / Features

- Limited responses from insurance providers regarding standard policy

Pros

- Eventual sunset of tax (25+ years)
- Meets goal of helping health and environment
- Tracking complaints would be easier

Cons

- Potentially complicated & expensive
- EPA approval needed
- High staffing requirements
- Increasing risk as tank universe ages
- “Forever” program limits options
- Litigation issues with 3rd party coverage
- Need the most authority changes
- Would put state in competition with private market

Pros

- Faster sunset of fuel tax than Full FR
- Avoids 3rd party coverage issues
- Otherwise, same pros as Full FR

Cons

- O/Os still need 3rd party coverage
- Still need to track 3rd party coverage separately
- Otherwise, same cons as Full FR

Pros

- Efficient use of tax dollars
- No EPA approval needed
- Insurance companies would handle claims
- Sunset of tax – possibly more quickly than partial FR

Cons

- Some insurers may opt out of participation
- Need to price reinsurance coverage
- “Forever” program limits options
- Safety net issues – difficult to ensure coverage
- Legacy claims – ADEQ still needs to cover

Pros

- No EPA approval needed
- Subrogation acts as a bridge from suspected to confirmed releases
- Not a “forever” program – flexibility in future decisions
- Glide path off tax

Cons

- Voluntary involvement may have requirements that are more stringent than current federal law
- New authorities will be necessary
- O/Os may reset retro dates
- May require more AG support

Pros

- May help remove bad tanks
- Already in bill language
- May help enforce coverage

Cons

- Doesn't address currently leaking tanks
- Paying for and timeframe for gap claims
- Tank removal funded by tax payers
- Insurers may leave state
- Can't ensure retro dates are honored
- Not as financially viable as some other options
- As tanks age, fewer are insured (or rates go up)

New Authorities Needed

Authority Needed	Full FR	Partial FR	Reinsurance	Federal FR + State Lead	Standard Policy
Pull tanks	X	X			
Enforce corrective action	X	X	X	X	X
Shut down facility for non-payment of premium	X	X			
Collect bond or letter of credit for deductible	X	X	X		
Expand state lead				X	X
Subrogation or named insured status				X	
Shut down tank and force cleanup	X	X	X	X	X
Collect data from insurers			X	X	X
Authority over ASTs	X	X	X	X	X

Comparison to goals

	Protect Human Health and the Environment*	Financially Viable	Sunset the tax
Full FR w/ 3 rd party liability coverage	Yes	Yes - ultimately	Not in near term
Partial FR w/o 3 rd party liability coverage	Yes	Yes - ultimately	Not in near term
Reinsurance	Yes	Yes - ultimately	Not in near term
Federal FR with State Lead as safety net	Yes	Yes	Possibly
Standardized Policy	Yes	Possibly	No

* With add on of State Lead and Upgrade of Tanks

Tax Sunset Comparison

Full FR w/3rd party	Slow glide off tax 25+ years
Partial FR w/o 3rd party	Slightly faster than Full FR is possible
Reinsurance	Depends on insurers – could be very fast or very slow
Federal FR plus State Lead	Could reduce tax over time, but probably can't completely eliminate need
Standardized policy	Unclear – More reactive than proactive – might be difficult to get to a point of reducing or eliminating the tax