



NEW ADEQ UST/LUST PROGRAM - INTRODUCTION

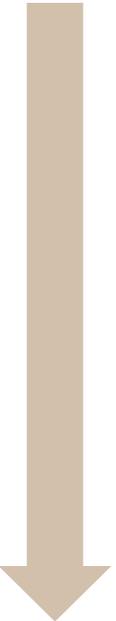
2014 Stakeholder Meeting – July 28, 2014



- **Introduction/Process and Objectives**
- **Background**
- **Review of Federal and State requirements for UST Financial Responsibility (FR)**
- **Summary of recent legislation and program elements**
- **Discuss concept of having a “standard insurance policy” in Arizona**

- Several stakeholder meetings, each with a focused topic – open process
- Purpose is to gain input on program elements
- Schedule of meetings/topics to be published
- Meeting minutes posted on ADEQ's website
 - <http://www.azdeq.gov/environ/waste/ust/lust/stakeholder.html>
- Submit comments to ADEQ anytime
- Goal = develop a consensus bill to deliver to the legislature

SUMMARY OF UST PROGRAM HISTORY:

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- 1986** – UST Release Prevention Program and Leaking UST (LUST) Program (to oversee release cleanups) were created
- 1989** – January 1989 is first compliance deadline for Federal Financial Responsibility (FR) requirements. In 1989, FR requirements were added to AZ UST Statutes
- 1990** – UST Revolving Fund is established.
The fund has **3** accounts:
- **Regulatory Account**
 - **Assurance Account [State Assurance Fund (SAF)]**
 - **Loan Account**
(approx. 20,000 USTs and approx. 1,500 open releases)

SUMMARY OF UST PROGRAM HISTORY:

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- 1998** – Deadline for UST upgrade requirements
 - 2004** – SB 1306 sets forth phase out dates for SAF coverage
(approx. 8,000 USTs and 2,300 open releases)
 - 2005** – Federal Energy Policy Act passes
 - 2006** – End of SAF eligibility for releases reported after June 30, 2006
(approx. 1,500 open releases)
 - 2010** – End of SAF claim eligibility: no claims accepted after June 30,
2010
(approx. 7,000 USTs and 860 open releases)
total SAF payout: approx. **\$335M**

CURRENT CONDITIONS:

Open LUSTs (data from 7/24/2014): **716 at 383 facilities**

92% of reported releases have been closed

fewer releases are being reported from upgraded UST systems

USTs (Open and in Temp. Closure): approx. **6,800**

SAF paid out approx. **\$335M** in claims for corrective actions at approx. 2,600 facilities.

SAF paid out approx. **\$65M** for State Lead cleanups.

State Lead corrective actions are currently funded through the Regulated Substance Fund (RSF)

THE STATE ASSURANCE FUND:

The phase-out of the SAF program included increased outreach efforts to owners and operators regarding FR requirements.

The phase-out addressed release reporting timeframes and claim submittal deadlines for eligible releases :

Deadline for release reporting for SAF eligible releases
– *June 30, 2006*

Deadline for claim submittal for eligible releases
– *June 30, 2010*

In response to the 2013 UST FR Performance Audit, ADEQ is making changes to FR processing, data tracking, outreach, and training



Department of Environmental Quality—Underground Storage Tanks Financial Responsibility

REPORT HIGHLIGHTS PERFORMANCE AUDIT

Department continues to fail to ensure that UST owners and operators meet financial responsibility requirements

Our Conclusion

The Department of Environmental Quality (Department) is responsible for ensuring that owners and operators of petroleum underground storage tanks (USTs) comply with federal and state financial responsibility requirements. These requirements help ensure that UST owners and operators can pay to clean up leaks and spills and compensate third parties for bodily injury and any property damage incurred. Sites and/or

Financial responsibility requirements intended to minimize public cleanup costs—To protect human health and the environment, federal and state laws require owners and operators of petroleum underground storage tanks (USTs) to have financial resources to clean up spills and leaks. These laws are intended to minimize the number of leaking USTs that are abandoned or “orphaned” by their owners and operators and to ensure that the polluter or responsible party, rather than the general public, bears the burden and cost of cleanup if needed. Federal and state government entities are exempt from the requirements. However, all others with regulated petroleum USTs, including local governments, must comply with the requirements.

There are 12 different mechanisms that owners and operators can use to demonstrate financial responsibility. These include insurance, self-insurance, letters of credit, and other mechanisms. According to department data, as of March 2013, most of the 2,423 facilities with regulated USTs in Arizona used insurance as their financial responsibility coverage mechanism. All USTs are supposed to be registered with the Department, and proof of financial responsibility must be provided at registration.

(From the 2013 UST FR Performance Audit)

**Table 4: Length of expired financial responsibility coverage
As of March 20, 2013**

Time expired	USTs with expired financial responsibility coverage		Percent of the 2,423 total UST facilities
	Number of UST facilities	Percent of UST facilities	
1-60 days	52	7%	2%
61-120 days	76	10	3
121-180 days	85	11	4
181-365 days	100	14	4
366 days-2 years	158	21	7
More than 2 years	<u>275</u>	<u>37</u>	<u>11</u>
Total	<u>746</u>	<u>100%</u>	<u>31%</u>

Source: Auditor General staff analysis of department financial responsibility data for total regulated facilities and facilities with expired financial responsibility coverage as of March 20, 2013.

**Table 5: Number and percent of USTs by age
As of May 30, 2013
(Unaudited)**

Years	Number of USTs	Percent of USTs
50+	36	<1%
40-49	189	3
30-39	676	10
20-29	2,935	43
10-19	2,000	29
0-9	955	14
Missing	<u>83</u>	<u>1</u>
Total	<u>6,874</u>	<u>100%</u>

Source: Auditor General staff analysis of department UST data as of May 30, 2013.

IN SUMMARY:

The SAF was established in 1990 and it accomplished what it was designed to do.

RSF funding (\$60M) will likely cover off-site and groundwater contamination for State Lead cleanup at orphan sites, but will run out of funding for program operation by December 2017.

The UST Program needs funding for Leak Prevention, LUST Corrective Action and the State Lead Program. Otherwise, programs revert to EPA.

ADEQ must take action in response to the findings from the 2013 UST FR Performance Audit.

Any new State Assurance should be designed to address current conditions.

FR requirements

- Federal
- State
- **Proposed New Standard Policy for AZ USTs**



Federal FR Requirements (40 CFR 280 Subpart H)

From: <http://www.epa.gov/oust/ustsystem/finresp.htm>

- Congress amended Subtitle I of the Solid Waste Disposal Act, it directed the U.S. Environmental Protection Agency (EPA) to develop financial responsibility regulations for owners and operators of underground storage tanks.
- Congress wanted owners and operators of underground storage tanks (USTs) to show that they have the financial resources to clean up a site if a release occurs, correct environmental damage, and compensate third parties for injury to their property or themselves.

NEW ADEQ UST/LUST PROGRAM - FINANCIAL RESPONSIBILITY REQUIREMENTS



Review of Federal FR Requirements

Group Of UST Owners And Operators	Compliance Deadline	Per Occurrence Coverage	Aggregate Coverage
<p>GROUP 1: Petroleum marketers with 1,000 or more tanks</p> <p>OR</p> <p>Nonmarketers with net worth of \$20 million or more (for nonmarketers, the "per occurrence" amount is the same as Group 4-B below)</p>	January 1989	\$1 million	<p>\$1 million if you have 100 or fewer tanks</p> <p>OR</p> <p>\$2 million if you have more than 100 tanks</p>
GROUP 2: Petroleum marketers with 100-999 tanks	October 1989		
GROUP 3: Petroleum marketers with 13-99 tanks	April 1991		
GROUP 4-A: Petroleum marketers with 1-12 tanks	December 1993		
GROUP 4-B: Nonmarketers with net worth of less than \$20 million	December 1993	<p>\$500,000 if throughput is 10,000 gallons monthly or less</p> <p>OR</p> <p>\$1 million if throughput is more than 10,000 gallons monthly</p>	
GROUP 4-C: Local governments (including Indian tribes not part of Group 5)	February 1994		
GROUP 5: Indian tribes owning USTs on Indian lands (USTs must be in compliance with UST technical requirements)	December 1998		

Arizona FR Statute

A.R.S. § 49-1006. Statement of financial responsibility

A. If required by regulations adopted pursuant to 42 United States Code section 6991b(d) to establish evidence of financial responsibility, an owner and operator shall file with the department a statement of financial responsibility containing evidence that the owner and operator are financially capable of taking the actions required by this chapter.

B. Evidence of financial responsibility required by this section shall be established in a manner prescribed by the director by rule. The rules adopted pursuant to this section shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

Allowable Arizona FR Mechanisms

- A large number of options are available to owners/operators to demonstrate that they comply with FR requirements. In Arizona the allowable financial assurance mechanisms are as follows:

<p><u>All Owners /Operators:</u></p> <ul style="list-style-type: none">• Financial Test of Self-insurance• Corporate Guarantee*• Insurance/Risk Retention Group Coverage• Surety Bond*• Letter of Credit*• Certificate of Deposit• Trust Fund <p>*These mechanisms require that a standby trust fund be established.</p>	<p><u>Additional Mechanisms for Use by Local/County Governments:</u></p> <ul style="list-style-type: none">• Local Government Financial Test• Local Government Guarantee• Local Government Fund
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- Owners/operators may use one mechanism or a combination of mechanisms to meet FR obligations.

FR Mechanisms in Use in Arizona

Commercial Insurance	76.8%
Self-Insurance	5.4%
Corporate Guarantee	4.1%
Government Mechanisms	2.4%
Risk Retention Group	1.5%
Other Methods	<0.5%
No coverage	9.4%

(NOTE: percentages are approximate)

ADEQ FR Documentation Requirements

- Documentation showing compliance with FR requirements must be submitted to ADEQ on an **annual** basis.
 - All documentation must include the schedule of covered tanks
- Insurance policy:
 - The endorsement or certificate (whichever is applicable) must be worded as specified in 40 CFR §280.97

NOTE: ACORDS, DECLARATIONS AND BINDERS are NOT acceptable documentation (proof) of FR compliance

ADEQ FR Document Requirements -- continued

- Certificate of Deposit:
 - The certification and agreement must be worded as specified in Appendix A of A.A.C. Title 18, Chapter 12.

- Wording for other mechanisms:
 - Pertinent documents must be worded as specified in the applicable sections of 40 CFR Part 280, Subpart H.

- Certification of Financial Responsibility:
 - This certification is applicable to all mechanisms and must be submitted to ADEQ every year. It must be worded as specified in 40 CFR §280.111.

■ Summary of recent legislation:

House Bill 2708 (51st Legislature, 2nd Regular Session 2014)

- **ARS 49-1023:** Extends delivery prohibition to USTs that are out of compliance with FR requirements (requires 30 day notice and opportunity to demonstrate compliance)
- **Laws 2004, Chapter 273:**
 - ❖ Repeals section 8 from and after December 31, 2014
 - ❖ Extends period for SAF payment claim submittal through 5pm December 31, 2015 (for releases reported prior to July 1, 2006)
 - ❖ Does not require action on claims until new revised UST corrective action program is effective

House Bill 2708 (continued) –

- Sec. 12. Legislative Intent:

Assurance Account funding (A.R.S. 49-1015) will be used to fund:

- A new and revised UST corrective action program
- Implement the new corrective action program and existing UST leak prevention program

New program is required to:

- Conduct baseline assessments of all existing USTs to determine whether they are leaking and perform any necessary corrective actions
- Remove USTs at the request of the owner or operator
- Develop a “standard policy” and require owners or operators who use private insurance to meet FR requirements to obtain the standard policy

Senate Bill 1314 (51st Legislature, 2nd Regular Session 2014)

Sec. 14. Laws 2014, chapter 14, section 12 is amended to read:

Sec. 12. Legislative intent; underground storage tank assurance account

- AS AN ALTERNATIVE TO THE BASELINE ASSESSMENT OR THE STANDARD POLICY, THE NEW PROGRAM MUST ALLOW AN OWNER OR OPERATOR TO DEMONSTRATE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY THAT THE FINANCIAL RESPONSIBILITY REQUIREMENTS IN STATE AND FEDERAL LAW ARE ALREADY BEING MET.

- Proposed framework for new program:
 - Development of Standard Policy (UST Insurance)
 - Baseline Assessments
 - UST Removals
 - Cleanup (Corrective Actions)

Development of Standard Policy (UST Insurance)

INTENT: The standard policy OR FR mechanism MUST cover all releases identified after the Baseline Assessment.

The Arizona Department of Insurance in conjunction with ADEQ will work with private insurance companies to develop a standard insurance policy that will be required by law for every UST system subject to Baseline Assessment after the date of the Baseline Assessment.

OR

An owner/operator will have the option of demonstrating to ADEQ that its means of meeting FR (through net worth, bonding, or other forms of insurance) meets applicable state and federal law in lieu of the standard insurance policy.

Baseline Assessments

- The protocol for the Baseline Assessment will be developed in conjunction with private insurance companies.
- The proposal requires an ADEQ managed Baseline Assessment to be conducted at any facility (with USTs that are not permanently closed):
 - that does not have current information regarding site conditions consistent with the protocol for the Baseline Assessment; and
 - that satisfies 40 CFR Part 280 Financial responsibility, in part or whole, through insurance; unless the owner/operator voluntarily opts-out by submitting to ADEQ for review and approval written documentation that it is in compliance with State and federal Financial Responsibility requirements.

Baseline Assessments

- ADEQ authority to prohibit delivery (“red tag”) and force closure of any system at a site that does not participate in the Baseline Assessment where the Baseline Assessment is required.

■ UST Removals

- ADEQ will manage projects using private contracts to administer and fund eligible UST tank removals upon request of the owner or operator.
- Deductible will be required unless the owner/operator demonstrates a financial hardship.

Cleanup (Corrective Actions)

- **ADEQ managed:** State Lead program will use private contracts with experienced, qualified consultants on sites where the owner/operator is unwilling or unable to complete the corrective action.
- **Owner/Operator managed:** Competent, willing owner/operator may complete their corrective actions with their own contractors at their own expense.

First Meeting Focus Area

Development of Standard Policy (UST Insurance)

INTENT: The standard policy OR FR mechanism MUST cover all releases identified after the Baseline Assessment.

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OR

An owner/operator will have the option of demonstrating to ADEQ that its means of meeting FR (through net worth, bonding, or other forms of insurance) meets applicable state and federal law in lieu of the standard insurance policy.

Development of Standard Policy (UST Insurance) continued

- Owners/Operators will be able to opt out on a per facility basis.
- Owners/Operators who “opt out”:
 - will receive no State funding or ADEQ corrective action assistance (other than normal regulatory administration of work performed), and remain subject to all applicable regulatory requirements.
- If an Owner/Operator opts-out then sells the facility after the *Baseline Assessment process is closed*, the new Owner/Operator is not eligible for state cleanup funds. This must be disclosed during the sale.
- Regardless, the FR or standard policy **must cover all releases identified after the Baseline Assessment.**

Discussion Period – **Standard Policy**

What are the anticipated issues/concerns with using a Standard Policy for AZ?