



Arizona State Senate *Issue Brief*

October 29, 2008

Note to Reader:

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UNDERGROUND STORAGE TANK (UST) PROGRAM

INTRODUCTION

Arizona's Underground Storage Tank (UST) Program, administered by the Arizona Department of Environmental Quality (ADEQ), is designed to prevent, detect and clean up releases of petroleum and other hazardous substances from USTs into the groundwater, surface soils and subsurface soils. The state program also provides financial assistance to UST owners and operators for upgrading and removing old or failing tanks and for cleaning up site contamination from leaking USTs, or LUSTs.

HISTORY AND OVERVIEW

The UST Program was established in 1986 by the Legislature to implement UST regulations adopted by Congress in 1984 as part of the federal Resource Conservation and Recovery Act. The program is funded from a one-cent per gallon excise tax on regulated substances (primarily petroleum), a \$100 tank registration fee and several federal grants. According to ADEQ, the excise tax currently generates approximately \$30 million annually. Under the UST Revolving Fund, there are three separate accounts – the UST assurance account, the grant account and the regulatory account. The UST assurance account, which is also known as the State Assurance Fund (SAF), is intended to provide coverage of corrective action costs (clean up costs) incurred by a UST owner or operator or ADEQ. Most of the revenues from the excise tax are deposited into SAF.

During the early 1990s when ADEQ was in the early planning stages of the UST Program, there were very few claims for corrective action costs, and, consequently, the balance in SAF grew faster than it was utilized. Monies were appropriated during this time period from SAF for purposes unrelated to the UST Program, such as balancing the state budget, providing money for public transit programs and subsidizing the vehicle emission test costs in Maricopa County when the biennial emissions test was implemented. A total of \$19 million was appropriated from SAF during this period. Since 1996, a total of \$7,128,000 has been appropriated from the state General Fund to partially

reimburse SAF, including a state General Fund appropriation of \$500,000 in FY 2002-2003 (Laws 2001, Chapter 272). The SAF Area B account, representing UST revenues generated from every county except Maricopa, has been paid back in its entirety. The SAF Area A account, representing UST revenues generated from Maricopa County, has not been repaid a total of \$11,923,700 of the original \$19 million.

Financial Responsibility

Federal and state laws require that a UST owner or operator have a current financial responsibility (FR) mechanism. FR means having the financial ability to pay for both costs of corrective actions and third-party liability claims (property and bodily injury) associated with releases of a petroleum product from an owner's or operator's UST system.

All petroleum marketing firms (e.g., gas stations) are required to have \$1,000,000 available to clean up and pay for any third-party damages resulting from each release (also known as a "per occurrence amount"). For nonpetroleum marketing firms (i.e., governmental entities that own or operate USTs for fleet vehicles), the required per occurrence amount is based on average monthly throughput. An average monthly throughput of 10,000 gallons or less requires coverage of \$500,000; more than 10,000 gallons requires \$1,000,000 of coverage.

UST owners or operators are also required to carry coverage for the annual "aggregate," which is a limit or cap on the amount that must be covered per year. The aggregate is based on the number of UST systems owned. The annual aggregate coverage required is \$1,000,000 for owners of 1 to 100 USTs; owners of more than 100 USTs are required to carry \$2,000,000 of aggregate coverage.

Program Evaluation and Recent Changes

An 11-member UST Policy Commission was formed in 1998 to evaluate the overall effectiveness of the UST Program and to review and make annual recommendations on agency policies, guidelines and rules for the Program. A five-member UST Technical Appeals Panel

comprised of UST technical experts was also formed that year to participate in administrative hearings on UST decisions or determinations issued by the ADEQ and make technical findings of fact on those decisions or determinations.

In 2004, the Legislature passed S.B. 1306 (Laws 2004, Chapter 273), which phases out the excise tax and SAF beginning July 1, 2006. Many other programmatic changes were made to SAF reimbursement criteria, insurance requirements and copay amounts.

Policy Implications

Eliminating the excise tax and SAF on July 1, 2006, had two implications: 1) UST owners and operators must now be dependent on their FR mechanism to pay for all needed corrective actions for those releases reported after June 30, 2006, and 2) SAF can no longer be used for compliance with any state or federal FR requirements after June 30, 2006.

To satisfy FR requirements, UST owners or operators have several options, including: commercial insurance, self-insurance, guarantee, letter of credit, surety bond, trusts or a certificate of deposit. Local government entities may use a government fund, a bond rating test, government guarantee or a government financial test. According to the ADEQ, the most common FR mechanism is UST pollution liability insurance that can be obtained through an insurance agent.

Failure of a UST owner or operator to carry an appropriate FR mechanism can result in enforcement action and fines of up to \$10,000 per day.

According to ADEQ, as of July 31, 2007, SAF had approximately \$52,000,000 available to reimburse clean up applications for approximately 900 historical releases that were reported prior to the 2006 deadline and still require remediation. All SAF reimbursement applications for historical releases must be submitted to ADEQ by June 30, 2010. In 2008, a combined total of \$40,419,700 was transferred from the UST Revolving Fund to the state General Fund to offset a portion of the budget

shortfall in the FYs 2007-2008 and FY 2008-2009 enacted budgets (Laws 2008, Chapter 53).

Response to Energy Policy Act of 2005

In 2008, the Legislature passed H.B. 2425 (Laws 2008, Chapter 218), which makes changes based on federal UST requirements as mandated by the Energy Policy Act of 2005, including requirements for notification, secondary containment and release detection, and piping component and motor fuel dispenser installation. As a result of this legislation, beginning January 1, 2009, ADEQ is authorized to issue a “stop-use” order and attach a “stop-use” tag to the fill pipe of any UST that is out of compliance with release detection or operational requirement, and operation of the UST may result in a continued or new release. In order to prevent a product deliverer from depositing a regulated substance into the UST, an owner must keep the “stop-use” tag on the unit until the UST is brought into compliance.

H.B. 2425 also created UST operation certification designations that take effect August 9, 2012. Under these designations a UST owner or operator is responsible for assigning individuals with either a Class A, B or C certification based on the responsibilities of the individual as outlined in the chart below. Class A operators may train both Class B and Class C operators. A Class B operator may train a Class C operator. Training is valid for at least one year but not more than three years after completion.

UST Operation Classification	
Class A	Responsible for the primary management or decision making authority for the operation, maintenance and record keeping of a UST facility.
Class B	Responsible for the daily operation, maintenance and record keeping of a UST facility.
Class C	Responsible for the initial response to an alarm or other indication of an emergency caused by a release or suspected release from a UST.

ADDITIONAL RESOURCES

- Arizona Department of Environmental Quality
www.azdeq.gov
- UST program information
www.azdeq.gov/environ/ust/
- UST Statutes: Arizona Revised Statutes, Title 49, Chapter 6
- FY 2009 Appropriations Report
<http://www.azleg.gov/jlbc.htm>