**Underground Storage Tank Program**

**INTRODUCTION**

As defined in Arizona Revised Statutes, an Underground Storage Tank (UST) system means any tank and underground piping connected to the tank used to contain a regulated substance (i.e. petroleum) that has at least 10 percent of its total volume underground. Arizona’s 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.

**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 annual registration fee for each UST and several federal grants. The owner or operator of an UST, which serves as the final dispenser of motor vehicle fuel, aviation fuel and diesel, is responsible for payment of the tax and registration fee. The tax does not apply to: 1) USTs operated by the state or federal government, and 2) USTs used for jet fuel. Indian tribes are also exempt but through an intergovernmental agreement may participate in the partial coverage of corrective action costs by paying the excise tax.

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, also known as the State Assurance Fund (SAF), established in 1990, was
intended to provide partial coverage of corrective action (clean up) costs incurred by an UST owner, operator, political subdivision or ADEQ. Eligible costs for reimbursement may include: 1) cleanups that are reasonable, cost effective and foreseeable; 2) sampling, analysis and reporting that verifies the existence of UST release that requires cleanup; and 3) under specific circumstances, closure of the UST system.

**Financial Responsibility**

State and federal laws require that an UST owner or operator have a current financial responsibility mechanism in place which means having the financial ability to pay for both costs of corrective actions (remediation) and third-party liability claims (property and bodily injury) associated with releases from UST systems. There are two separate required amounts: 1) “per occurrence” coverage, and 2) “aggregate” coverage.

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 “per occurrence” coverage). 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.

The second required amount, the annual “aggregate” coverage, 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.

Without evidence of financial responsibility, the owner or operator is subject to enforcement actions and fines up to $10,000 per day. For more detailed information, contact your insurance agent or contact ADEQ’s Financial Responsibility Coordinator at (602) 771-4110.

**Enforcement**

The cleanup of releases from USTs is required by federal and state law, as set forth in the Code of Federal Regulations, Arizona Revised Statutes and Arizona Administrative Code, respectively. Confirmed releases not addressed by the owner or operator in the time frame required and non-compliant UST facilities are referred to the Leaking UST Enforcement Unit for actions that may range from a Notice of Violation, to administrative orders to a lawsuit if compliance cannot be achieved informally.

The UST Technical Appeals Panel (Panel) is composed of five regular members and two governor-appointed alternates that have technical expertise of UST. The Panel may be requested by the Administrative Law Judge (ALJ), the appellant or ADEQ to participate in a hearing arising from a final decision or determination issued by ADEQ. The Panel hears testimony, reviews evidence and prepares written findings of fact that are adopted into the ALJ’s recommendation to the ADEQ Director.

**Legislation**

*Response to Energy Policy Act*

In 2008, the Legislature passed H.B. 2425 (Laws 2008, Chapter 218), which made 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 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 requirements, 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, the owner or operator must keep the "stop-use” tag on the unit until the UST is brought into compliance.

Certification Requirements

H.B. 2425 also created operation certification designations which require all UST owners or operators to designate individuals as Class A, B, or C certified based on the responsibilities outlined in the chart below. Class A and B individuals must be trained within 30 days of being designated and Class C individuals must be trained prior to assuming that role. Class A operators may train both Class B and C operators, and a Class B operator may train a Class C operator. Training is valid for up to three years after completion.

<table>
<thead>
<tr>
<th>UST Operation Classification</th>
<th>Details</th>
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<tbody>
<tr>
<td>Class A</td>
<td>Responsible for the primary management or decision making authority for the operation, maintenance and record keeping of a UST facility.</td>
</tr>
<tr>
<td>Class B</td>
<td>Responsible for the daily operation, maintenance and record keeping of a UST facility.</td>
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<tr>
<td>Class C</td>
<td>Responsible for the initial response to an alarm or other indication of an emergency caused by a release or suspected release from a UST.</td>
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One-Cent Excise Tax and SAF Coverage

In 2004, the Legislature passed S.B. 1306 (Laws 2004, Chapter 273) which made several programmatic changes to SAF reimbursement criteria, insurance requirements and co-pay amounts. Most notably, this legislation provided for a schedule to phase out and terminate eligibility for coverage from the SAF. This meant that only those UST releases that were reported to ADEQ before July 1, 2006, and claims submitted for payment of eligible costs before July 1, 2010, may qualify for reimbursement coverage. However, in recognition of the long-term nature of many UST cleanups and the continuing need to cleanup orphaned USTs yet to be found, the Legislature established the Regulated Substance Fund (RSF) to be used by ADEQ for the cleanup of releases following termination of the SAF. All monies remaining in the SAF after eligible claims were paid were required to be automatically transferred to the RSF. The SAF and the one-cent per gallon excise tax were set to sunset upon receipt of $60,000,000 into the RSF, or December 31, 2013, whichever occurred first.

In 2013, the Legislature passed S.B. 1080 (Laws 2013, Chapter 244) which continues the one-cent excise tax until December 31, 2015, and extends eligibility for coverage of corrective action costs from the SAF for releases at a site in compliance that could not have been reported with the exercise of reasonable diligence prior to July 1, 2006. In conjunction, the period to submit an application for reimbursement of eligible costs from the SAF has been extended until December 31, 2015. However, ADEQ is not required to take action on an application for coverage, reimbursement, or preapproval until after the study committee (also created by this legislation) submits a report of its findings and recommendations, and only if the SAF has sufficient monies to pay claims. Monies deposited in excess of $60,000,000 in the SAF must be deposited into the State
Highway Fund and all monies remaining in the SAF after all claims are paid must be automatically transferred to the RSF, up to a maximum of $60,000,000.

**ADDITIONAL RESOURCES**

- Arizona Department of Environmental Quality
  [www.azdeq.gov](http://www.azdeq.gov)
- UST program information
  [www.azdeq.gov/environ/ust/](http://www.azdeq.gov/environ/ust/)
- UST Statutes: Arizona Revised Statutes, Title 49, Chapter 6
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