

LUST RELEASE OFF-SITE ACCESS DOCUMENTATION & FORMAT

Federal and state law require UST owners and operators to investigate UST releases to determine the extent and degree of contamination, and to continue corrective actions through release case closure. The results of the investigation are required to be provided in the Site Characterization Report (SCR). The SCR may be considered the cornerstone of all subsequent corrective actions. This report provides a comprehensive evaluation of the LUST site (and, if applicable, offsite) conditions; therefore, it is essential for determining subsequent corrective actions, including determination of site-specific corrective action standards and remedy selection, to ultimately achieve case closure.

In some cases, based on the evaluation of data obtained during characterization, it may be determined that the contamination has, or is likely to extend offsite. In these cases, investigation of offsite properties is required, which requires access to those properties to conduct corrective actions.

ADEQ has prepared this summary to assist owners and operators with ensuring that the format used and information provided meets the requirements for demonstrating compliance with pursuit of access to investigate offsite contamination in accordance with A.R.S. § 49-1022

See: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/49/01022.htm>

This guidance document is organized to provide the user with information on the types of information that ADEQ will consider during review. It is structured to separate each regulatory requirement and reporting form section and provide:

Considerations: *Common things ADEQ will be considering when reviewing each element for completeness and compliance*

Recommendations: *Things recommended by ADEQ but not necessarily required to be strictly adhered to that will facilitate the review of reported data and information during regulatory review*

OFF SITE ACCESS

It may become necessary for owners and operators to obtain access to off site properties to determine the full extent and degree of contamination associated with release(s). Attempts to gain access should be initiated when it has been determined that the contamination has or may have migrated off site.

In most cases, off site property owners will allow access as long as it does not interrupt their business or include installation of above ground infrastructure. Sometimes it is necessary to solicit access from multiple nearby property owners, including locations in a right of way or easement area. If access cannot be obtained, owners and operators may submit a written request that the Department attempt to obtain access to the property under A.R.S. § 49-1022(A)(2), documenting their efforts to comply with the statutory requirements.

If the owner/operator cannot complete the site characterization due to access issues, and all conditions prescribed in A.R.S. § 49-1022(A)(2) are satisfied, the owner and operator should contact ADEQ to discuss options that are available for completing characterization.

If ADEQ conducts offsite investigation on behalf of the owner or operator, the owner or operator is required to reimburse the department for any costs paid pursuant to A.R.S. § 49-1022(C).

A.R.S. § 49-1022(E) describes the impact on the owner or operator's corrective action obligations when access to an offsite property is denied and the UST owner or operator access attempts meet statutory requirements: *If a release of a regulated substance has migrated on or under a person's property, the department shall relieve the owner or operator of the underground storage tank from responsibility from performing corrective action at the property where the release has migrated or where the department has determined it is likely to have migrated, if the owner or operator is unable to gain access to the property after complying with subsection A, paragraph 2, subdivisions (a) and (b) of this section. Nothing in this section relieves the owner or operator from liability for completing the requirements of section 49-1005 relating to the owner's or operator's property or any other property to which the contamination may have migrated. The department may require that the owner or operator investigate any other properties potentially impacted by the release in order to complete the requirements of section 49-1005.*

Note that even if a LUST owner/operator is relieved from its responsibility to perform corrective action at an off site property per A.R.S. § 49-1022(E), the LUST owner/operator may not be relieved from taking corrective action at other downgradient off site properties.

Requirements: To demonstrate compliance with A.R.S. § 49-1022(A)(2), the owner or operator of the underground storage tank that is the source of the release is required to demonstrate the following:

- *The owner or operator has sent and the person has received at least two (2) written requests to allow the owner or operator to have access to the property at reasonable times and under reasonable conditions.*
- *The owner or operator has made an offer of reasonable compensation to the person.*
- *Contamination is likely to spread or increase in severity if access to the property is not obtained.*
- *Those requests have been denied.*

Considerations:

- What information and data should be relied upon to demonstrate access is needed to offsite properties?
 - At what point in the characterization process is it appropriate to seek offsite access?
 - Is there sufficient information available to determine whether it is known or likely for contamination to have migrated offsite?
 - What should be considered in determining whether contamination is likely to spread or to increase in severity without offsite access?
 - What are the available options for offsite access based on available data?
 - Based on knowledge of the existing contamination, where is it most likely to migrate?

- How far has it likely migrated based on the rate of contaminant migration?
- Are there “best fit” properties, then alternative locations that may be appropriate?
 - *If there is no apparent risk based on existing data, is offsite access appropriate?*
- Is contact being made with the appropriate party (with the authority to grant access)?
- Can I verify two (2) written attempts for access that meet statutory requirements?
- Can I defend the amount offered as “reasonable compensation”?
 - Was this amount adjusted for the second written request? If not, why?
- Do I have documentation that clearly identifies denials?

Recommendation: ADEQ recommends that responsible parties rely upon their conceptual site model (CSM) and information obtained during characterization to understand the contamination from the release(s) and the potential for subsurface transport across the subject site and offsite.

This process should include an understanding of potential conduits for transport including subsurface utility corridors and local lithologic influences.

Note - this information will be evaluated by ADEQ for multiple purposes including - whether the state will pursue access to conduct the corrective actions and require the responsible party to reimburse the state’s efforts.

To demonstrate the efforts expended to obtain access, responsible parties should submit documentation including:

- Copies of all access-related owner/operator correspondence to the appropriate property owners, including evidence that the property owner(s) actually received the UST owner/operator’s request to access the property
- Copies of all access-related correspondence from the property owners to the owner/operator
- Summaries of access-related discussions/negotiations with property owners, and all reasons provided by the owner/operators for access denial
- Copies of access agreements offered to property owners
- A description of the reasonable compensation offered to the property owner and an explanation of why the offered compensation is reasonable.
- A map depicting pertinent properties and public right-of-ways (with utility locations identified) and their locations relative to the LUST site

Is offsite access required?

A.R.S. § 49-1022(A)(2)(c)

Contamination is likely to spread or increase in severity if access to the property is not obtained.

In order for ADEQ to seek access or undertake corrective action on an off site property, it is necessary to evaluate whether the spread of contamination has occurred, has likely occurred, or that there will be an increase in severity of the contamination if access is not obtained.

This evaluation should be conducted by the RP and provided to ADEQ for review.

Documentation could include:

- Details on the contaminated media including extent and degree of contamination
 - For example: groundwater contaminant plume maps that show wells with contamination above limits and a gradient in the direction of the offsite properties
- An evaluation of the current and potential future contaminant migration, including analysis of transport mechanisms and if applicable, modeling efforts that project contamination based on known data and subsurface conditions
- An evaluation of all potential offsite locations that could be used for investigative purposes (not limited to the immediately off site properties)
- If not already provided in a previous report, include proposed corrective actions that would mitigate the spread or decrease the severity of contamination if property access was obtained.

Was the compensation offered reasonable?

A.R.S. § 49-1022(A)(2)(b)

The owner or operator has made an offer of reasonable compensation to the person.

Information should be provided to demonstrate how the responsible party determined that the amount offered is reasonable. The determination of reasonableness, may be impacted by the extent of work and access being proposed both in areal extent and length of time/repeated access.

The amount considered reasonable may vary depending on the location of the facility and current use of the property.