



Waste Programs Division Underground Storage Tanks

2014 Stakeholder Meeting New ADEQ Underground Storage Tank (UST) Program - Introduction

Thursday, November 6, 2014

10:00 A.M. to 12:00 P.M.

ADEQ, Rm 3175

Phoenix, Arizona

MEETING SUMMARY

Meeting Topics:

1. Introduction
 2. Review of Program Options
 3. Open Discussion
 4. Next Steps
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1. Introduction/Process and Objectives

Laura Malone, ADEQ Waste Programs Division Director, welcomed and thanked the meeting participants for attending the stakeholder meeting. This is ADEQ's third meeting to discuss the development of a new UST/LUST Program and create a framework for the program.

The objectives of the meetings are to gain input on program elements and develop a consensus bill to deliver to the Arizona legislature.

2. Review of Program Options

ADEQ conducted a brainstorming session with Taylor & Mulder, Inc. to develop a list of options for the potential framework for the new UST/LUST Program. A set of goals were established for the program, which include: (1) Protect human health and the environment; (2) Financial viability; and (3) Sunset the fuel tax. The session provided only a broad idea of possible mechanisms for the program.

A summary of the program mechanisms were presented by Jane Taylor of Taylor & Mulder, Inc. during the stakeholder meeting. Ms. Mulder is well-informed on insurance and provided her expertise to help develop the possible mechanisms for the new program.

A total of five options for the new UST/LUST Program were conceived:

- Full Financial Responsibility (FR)
- Partial FR
- Reinsurance
- Expanded State Lead and Federal FR
- Standardized Policy

Option 1: Full FR Mechanism

OPTIONS	FEATURES	PROS	CONS
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • EPA approval needed • New authority needed for ADEQ • “Forever” solution • Retro dates issue potentially unresolved • Legacy contamination potentially unresolved 	<ul style="list-style-type: none"> • Eventual sunset of tax (25+ yrs) • Meets goal of helping human health & environment • Tracking complaints would be easier 	<ul style="list-style-type: none"> • 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

This option will work in two ways, either (1) ADEQ will be the sole provider; or (2) ADEQ will be a part of the market. If ADEQ is the sole provider, this means that ADEQ will be the only FR provider in the state and would require that ADEQ be financially sound. ADEQ would need more authority to ensure that the owners and operators are in compliance with the regulations. ADEQ would need to hire staff knowledgeable in insurance. An area of concern would be the litigation issues with 3rd party coverage by positioning a state agency against citizens of the state.

Option 2: Partial FR Mechanism

OPTIONS	FEATURES	PROS	CONS
<ul style="list-style-type: none"> • Basically the same as Option 1, except this would exclude 3rd party liability 	<ul style="list-style-type: none"> • Basically the same as Option 1, except that it avoids issues associated with 3rd party liability claims 	<ul style="list-style-type: none"> • Faster sunset of fuel tax than Option 1 • Avoids 3rd party coverage issues • Otherwise, same pros as Option 1 	<ul style="list-style-type: none"> • O/Os still need 3rd party coverage • Still need to track 3rd party coverage separately • Otherwise, same cons as Option 1

This option would remove the problem with 3rd party coverage and litigation issues. Owners and operators (O/Os) would be required to obtain 3rd party coverage from another source. ADEQ would need to track that O/Os are obtaining this coverage and ensure that O/Os are in compliance.

Option 3: Reinsurance Mechanism

OPTIONS	FEATURES	PROS	CONS
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Aging tank universe may make premiums rise out of control • Difficulty ensuring leaks are covered – Standardized policies (required) • Low staffing requirements • Need to perform claim audits • “Forever” program 	<ul style="list-style-type: none"> • Efficient use of tax dollars • No EPA approval needed • Insurance companies would handle claims • Sunset of tax – possibly more quickly than Option 2 	<ul style="list-style-type: none"> • 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

For this option, ADEQ would set up the mechanism and participate with insurance carriers. The goal is to improve coverage and make insurance more affordable. One concern is aging tanks; a substantial number of tanks are reaching the 30 year mark and may create the need to increase premiums. In addition, this option would need a standardized policy. ADEQ would need to conduct claim audits to ensure that insurance companies are not taking advantage of the program.

Option 4: Expanded State Lead & Federal FR

OPTIONS	FEATURES	PROS	CONS
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • ADEQ would need authority to subrogate if need arises • Not a “forever” program • State lead could subsidize upgrades – repairs & replacements 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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

State lead would assist in confirming releases. This would reduce the time between confirming releases and making claims. State Lead would subsidize for upgrades to the UST system. This would ensure that tanks are up-to-date, especially aging tanks, and provide leak prevention. For this option, an owner or operator may list ADEQ as an additional insured. O/Os assign rights to ADEQ to conduct the clean up and approach the insurance carrier to respond to the state if the claim is denied.

Possible new authorities may include the ability to force clean up and shut down facilities not in compliance. ADEQ may introduce regulations on aboveground storage tanks (ASTs) in this option.

Currently, state law may not be more stringent than federal law. This is a concern since voluntary participation may have requirements that are more stringent than federal law. This constraint can be resolved through new legislation.

Option 5: Standardized Policy

OPTIONS	FEATURES	PROS	CONS
<ul style="list-style-type: none"> • Policy as stated in current legislation • Baseline assessments • Subsidization of UST removals • Corrective actions for releases identified this way • Coverage of “gap” claims 	<ul style="list-style-type: none"> • Limited responses from insurance providers regarding standard policy 	<ul style="list-style-type: none"> • May help remove bad tanks • Already in bill language • May help enforce coverage 	<ul style="list-style-type: none"> • 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)

This option includes developing a standard policy, conducting baseline assessments, contracting with companies to remove USTs, and conducting cleanups. The legislation that addresses this option is House Bill 2708 and Senate Bill 1314.

ADEQ prefers Option 4: State Lead and Federal FR. This is a mechanism that ADEQ can support. It is flexible and does not require a lot of changes. ADEQ can track whether program goals are being met. ADEQ would ensure that O/Os are meeting FR requirements.

3. Open Discussion

Meeting attendees provided feedback on the program options.

- Will ADEQ take care of remediation if 3rd party liability is purchased with another insurance carrier?
Response: *Yes, as long as the separate coverage meets the standards.*
- Would ADEQ conduct clean up to the same standards as insurance companies?
Response: *Yes, state clean up standards are the same as insurance company clean up standards. State lead conducts clean ups based on risk.*
- Please discuss O/O clean up claim rights.
Response: *ADEQ would coordinate with the O/O to perform the clean up. ADEQ would conduct clean up in the least invasive way possible. ADEQ would try not to disrupt operation for the O/O, if possible. The process would mirror the current State Lead process.*
- Will there be an appeals board if an O/O disagrees with how the state conducts the clean up or appeal the claim rights?
Response: *This would create a lot of administrative work and ADEQ would need to research this more.*
- Does any other state have a program similar to the State Lead and Federal FR mechanism?
Response: *No*
- Why would the state be listed as an additional insured? An owner/operator may assign rights to someone else and listing the state as additional insured may not be necessary.
Response: *Being listed as an additional insured, provides the state more rights to approach an insurance company on behalf of the O/O.*
- Does a State Lead and Federal FR mechanism drive bad behavior for owners/operators? It would provide an “out” by getting weak coverage and relying on the state.
Response: *ADEQ would incorporate safeguards and establish requirements for O/Os.*

4. Next Steps

Stakeholders were asked to review the options and may provide feedback by Thursday, November 20, 2014. Comments may be sent via email to Laura Malone at llm@azdeq.gov.

Submit comments to:

Laura Malone by Thursday, November 20, 2014.

Email: llm@azdeq.gov

For information on past meetings, please visit the ADEQ UST Stakeholder Meeting webpage at:

<http://www.azdeq.gov/environ/waste/ust/lust/index.html#sm>