

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

Thursday, September 25, 2014; 10:00 A.M. to 12:00 P.M.  
 ADEQ, Rm 3175  
 Phoenix, Arizona

**MEETING SUMMARY**

**Meeting Topics:**

1. Introduction/Process and Objectives
2. Status of Financial Responsibility (FR) Compliance
3. Insurance Company Survey Results
4. Recap of Draft UST/LUST Program Framework
5. Summary of Actuarial Study
6. Next Steps

**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 second 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. Status of Financial Responsibility (FR) Compliance**

Owners and operators may use one or a combination of FR mechanisms to meet FR requirements. FR documentation must be submitted on an annual basis to maintain compliance.

**FR Mechanisms in Use in AZ**



Approximately 9% of facilities in Arizona have not demonstrated financial responsibility. This equates to approximately 230 facilities. ADEQ is identifying and contacting owners and operators

that are not in compliance with federal and state financial responsibility requirements. Additionally, ADEQ has the authority to issue stop use orders for FR violations.

### 3. Insurance Company Survey Results

Insurance companies that provide underground storage tanks pollution liability insurance in Arizona were asked a set of questions regarding the proposed "standard insurance policy." Laura Malone provided a brief summary of the results.

**Table 1: Questions and Responses of Insurance Survey**

Question	Response
Does your insurance company provide a "standard policy" similar to what was discussed at the first stakeholder meeting?	<ul style="list-style-type: none"> <li>• Most carriers responded "no"</li> <li>• Some stated that their current policy meets the requirements of 40 CFR § 280.</li> <li>• Many stated that carriers are different and have exclusions and or conditions in their particular policies.</li> <li>• Seems to be essentially an occurrence-based policy.</li> </ul>
What do you estimate as the range in cost for premiums and deductibles associated with the proposed "standard policy"?	<ul style="list-style-type: none"> <li>• Don't know</li> <li>• More expensive</li> <li>• Maybe less (but only with exclusions)</li> <li>• Premiums would skyrocket</li> </ul> <p>Cost ranges given:</p> <ul style="list-style-type: none"> <li>• \$10,000 - \$25,000</li> <li>• Potentially thousands of dollars</li> </ul>
What information do you, as an insurer, need from a baseline assessment that will enable you to offer a "standard policy" that ensures coverage for all releases discovered after the baseline assessment is completed (regardless of when the release may have occurred)?	<p>Most carriers stated that a baseline assessment would need to be comprehensive and contain elements such as the following:</p> <ul style="list-style-type: none"> <li>• Testing of soil sand groundwater</li> <li>• Line testing</li> <li>• Phase I &amp; II site assessments</li> </ul> <p>Hurdles include:</p> <ul style="list-style-type: none"> <li>• Tanks closed in place</li> <li>• Issues with old tanks</li> <li>• Determining when enough testing has been completed</li> </ul>
Is the baseline assessment necessary to establish a "standard policy" that will cover releases identified after a future date?	<ul style="list-style-type: none"> <li>• If a new facility (no previous tanks) a baseline assessment is probably not required.</li> <li>• Insurers may treat the baseline assessment as the retro date</li> <li>• O/Os may have issues switching companies because the retro date is a little different for every insurer</li> <li>• Maybe not (e.g. O/Os that self-insure may opt out)</li> </ul>

	<ul style="list-style-type: none"> <li>• Issues related to secondary releases (15-20% ?)</li> <li>• Option: ADEQ issues NFA letter after the baseline assessment (and clean-up – may be looked at it as a higher quality risk by insurers).</li> </ul>
<p>Would you continue to provide coverage to parties you currently insure throughout the baseline assessment?</p>	<ul style="list-style-type: none"> <li>• Yes, have established long-term relationships with/have made commitments to insured</li> <li>• Maybe – higher degree of comfort with a new station &amp; tanks. More concern with the O/O that has been operating for years and wants to keep operating.</li> <li>• If in compliance with regulations, probably would continue.</li> <li>• A lot of insurers may stop writing policies in Arizona</li> <li>• Negligence/non-compliance is an issue</li> </ul>
<p>What are your greatest concerns regarding the concept of the proposed "standard policy"?</p>	<ul style="list-style-type: none"> <li>• There will still be typical insurance issues (e.g., spills not during policy period that may not have been discovered during baseline assessment).</li> <li>• High premiums/insurance costs.</li> <li>• Commingled releases/plumes (e.g., have to dip into two pools of money).</li> <li>• Being put in a position of paying out claims if insured are negligent.</li> <li>• Fewer insurance options for Arizona O/Os.</li> <li>• What happens if an O/O wants to change insurers.</li> <li>• Will be difficult to get carriers to agree to standard policy language.</li> </ul>
<p>Any other thoughts/concerns?</p>	<ul style="list-style-type: none"> <li>• Actuarial study - huge ticket item. What impact will it have on the State moving forward?</li> <li>• Some carriers will write this type of policy, but the deductible will be high (\$15,000?)</li> <li>• Admitted policy already approved by the Arizona DOI. Would have to refile with AZ DOI.</li> <li>• Standard policy is too much of a hurdle.</li> <li>• Use an online system for FR applications so would have to redo online system to tie the new policy into it.</li> <li>• Would not agree to it - would quit writing policies in Arizona or carve out Arizona facilities from policies.</li> </ul>

A goal of the survey to understand what the insurance companies value and how a standard policy would work in Arizona. The survey highlighted that establishing a standard policy is not a simple process and other options will need to be explored.

#### 4. Recap of Draft UST/LUST Program Framework

Through House Bill 2708 and Senate Bill 1314, changes were made to the UST Program, These changes include delivery prohibition to USTs not in compliance with FR, repeal of the transfer of monies from the UST Assurance Account to the State Highway Fund, and the use of the UST Assurance Account to develop and implement a new UST program, and fund the existing UST leak prevention program.

The proposed new framework for the UST/LUST Program includes:

- Development of a standard policy;
- Baseline assessments;
- UST removals; and
- Cleanup (Corrective Actions).

##### Standard Policy

It is the intent for the standard policy or FR mechanism to cover all releases identified after the baseline assessment. ADEQ plans to work with the Arizona Department of Insurance and private insurance companies to develop a standard insurance policy.

##### Baseline Assessments

A baseline assessment shall be conducted at a facility that meets federal and state financial responsibility requirements to obtain information on the current site conditions of the facility. An owner or operator may opt-out of conducting a baseline assessment.

##### UST Removals

ADEQ will utilize private contracts to fund eligible UST tank removals upon request of the owner or operator and will require the owner/operator to pay a deductible unless he/she demonstrates financial hardship.

##### Cleanup (Corrective Actions)

There are two options for cleanups: (1) ADEQ managed or (2) owner/operator managed. (1) An ADEQ managed program will utilize private contracts to complete the corrective action where the owner/operator is unwilling or unable to. (2) An O/O may complete the corrective action with their own contractors at their own expense.

**Please note:** ADEQ is not reviewing any new submitted claims since the proposed UST/LUST Program has not developed framework and guidance for the new program.

#### 5. Summary of Actuarial Study

Daniel W. Lupton of Taylor & Mulder, Inc. provided a presentation titled "*Actuarial Analysis of the ADEQ Underground Storage Tank Corrective Action Program.*" The scope of the study is to analyze costs and funding needs for corrective actions, baseline assessments, tank removals, and program operating costs. The study also evaluated the impact of various deductibles, revenue, and fund balances. Taylor & Mulder, Inc. was contracted to conduct a project with a Phase I and Phase II scope of work. Phase I includes developing the actuarial study and Mr. Lupton provided a

presentation on the draft report. Phase II will consist of developing options for the framework for the new proposed UST/LUST Program.

### 6. Next Steps

ADEQ plans to develop a set of options regarding the framework for the UST/LUST Program and present it at the next stakeholder's meeting. The information from the actuarial study and insurance company survey will be taken into consideration when developing the set of options. Additionally, ADEQ will work with Taylor & Mulder, Inc. to develop the options and costs for the framework.

### 7. Comments and concerns

#### Standard Policy

- The insurance carriers are concerned about the "standard policy" requirement that regardless of when contamination is found or when it happened, if it is after the baseline assessment, the insurance company would be required to cover the costs.

#### Actuarial Study

- Prior to SAF sunset in 2006, owners/operators did a lot of baseline assessments to get ready for the sunset which is why those companies aren't seeing issues and having any more leaks. So, all unknowns are now taken away. The report should be opened up for public comment because there's a lot of good information out there.
- By determining the program framework, it will provide a better estimate of the costs and projections.

#### Actuarial Study – Stakeholder Questions

- Will the actuarial report be open to public comment?  
*Response:* The report will not be public noticed for public comment.
- What is the average cost of a cleanup? Is the average cost based on per "release" or "site/facility"?  
*Response:* The estimated average cost of a soil only cleanup is \$18,500 and the cost for groundwater is \$129,000 based on unique combinations of sites and release dates, but not based on reported release counts.
- Were the assumptions in the actuarial study based on insurance premiums across the state? How many leaks would have been "catastrophic"?  
*Response:* This was not part of the scope of work but may be explored in Phase II of Taylor & Mulder's scope of work.
- Should the releases reported after the baseline assessments be separated out from the projected fund costs because they would be covered under the proposed "Standard AZ UST Insurance Policy"?  
*Response:* The evaluation was done so that costs associated with each component may be separated out. Therefore, separating out projected costs after baseline assessments have been completed should be possible.

- Are the cost savings from deductibles factored in to the cash flow table?  
*Response:* They are not. The report will make this clear.
- Where are the “gap” claims? Is there an estimate of liability on claims for releases before and after the sunset date of June 30, 2006?  
*Response:* The study provided projected cleanup costs for releases reported by June 30, 2006 and those releases reported after. It did not include an evaluation of releases that have been closed.
- Please provide a clarification on owner/operator costs. Do claim payment summaries include deductible amount paid by O/O or premiums?  
*Response:* Cost values represent payments made by ADEQ.
- Are the average assessment cost estimates from past fund data (SAF)? Did those estimates include costs that were paid by owner/operator?  
*Response:* Average cost data was based on payments made by ADEQ.
- How is the estimate calculated for future releases per year? Using the numbers provided, there are releases that haven’t been discovered yet at 50% of the facilities? Have you ever heard of this with another state? Isn’t this outrageous for projecting the frequency?  
*Response:* The number of releases does not equal the number of facilities. If more than one release was reported at a site on the same date as another release, those were considered as one release. If another release happened at a different date, it was captured as a separate release. Based on ADEQ’s data, sites averaged more than one release per facility.
- Are you claiming that 95% of releases are not being discovered under standard leak detection methods?  
*Response:* ADEQ clarified that “not reported” is different than not discovered.
- How many problems did you find with the data used to develop the actuarial study? How does this impact cost projections and fund deficit or surplus?  
*Response:* Taylor & Mulder conducted a sensitivity analysis. The report will clearly state the assumptions used in the analysis as well as the options explored in constructing the model.  
*Suggestion:* The sensitivity analysis should be included in the final report.
- What are “expenses”? What is included in the expenses?  
*Response:* Expenses include the baseline assessment, tank removals, personnel, travel, administrative overhead, inflation, etc. Overhead costs include transportation, equipment costs, cost to conduct soil borings, etc.
- Where is cost for “gap” claims?  
*Response:* Those values are included in the projected cleanup costs.

**Next meeting:**

TBD

ADEQ, Rm 3175, Phoenix, Arizona

Topic: Options for New UST/LUST Program

For future meetings, please visit the ADEQ UST Stakeholder Meeting webpage at:

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