



# Arizona State Senate Issue Brief

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## Note to Reader:

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## **UNDERGROUND STORAGE TANK PROGRAM**

### **INTRODUCTION**

An Underground Storage Tank (UST) system is a tank or combination of tanks and underground pipes and impact valves connected to tanks being used or having been used to contain regulated substances (primarily petroleum) and which has at least 10 percent of the total volume of the tank and underground portions of pipes connected to the tank underground ([A.R.S. § 49-1001](#)).

### **HISTORY AND OVERVIEW**

In 1984, Congress created a federal program to regulate USTs containing petroleum and hazardous chemicals to limit corrosion and structural defects and thus minimize tank leaks. The legislation also directed the U.S. Environmental Protection Agency (EPA) to set operating requirements and technical standards for: 1) tank design and installation; 2) leak detection; 3) spill and overfill control; 4) corrective action; and 5) tank closure.

The EPA delegated UST regulatory authority to approved state programs. As of March 2018, 38 states plus the District of Columbia and Puerto Rico have approved UST programs. State program approval does not apply to USTs on tribal lands. Owners and operators of USTs in the states, territories and tribal lands that do not have approved UST programs must meet the requirements outlined in federal UST regulation, which was most recently updated in 2015. As of April 2018, only 14 states plus the Commonwealth of the Northern Mariana Islands have updated their UST regulations to incorporate the federal revisions made in 2015.

In 1986, Arizona established its own UST program that regulates a majority of USTs in the state and is administered by the Arizona Department of Environmental Quality (ADEQ). Arizona's UST program does not have EPA program approval, and UST owners and operators must comply with both state and federal UST regulations.

The UST program is funded from a one-cent per gallon excise tax (UST tax) on regulated substances, a \$100 annual registration fee for

each UST and several federal grants. The UST owner or operator, 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; 2) USTs used for jet fuel; or 3) any non-hazardous waste substance specified in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 unless such substance was placed in the UST prior to July 1, 1997, and the owner or operator had paid all imposed taxes prior to that date ([A.R.S. § 49-1031](#)). Indian tribes are also exempt, but through an intergovernmental agreement, may participate in partial coverage of corrective action costs by paying the UST tax. The UST tax generates approximately \$27,000,000 annually and is scheduled to repeal on January 1, 2024.

[Laws 2004, Chapter 273](#) provided for the phase out of the UST tax and termination of eligibility for coverage from the State Assurance Fund (SAF) that provides financial assistance to eligible UST owners and others in meeting the costs of leaking UST cleanups. Only UST releases reported before June 30, 2006, and applications made by June 30, 2010, were eligible to qualify for reimbursement under the SAF. 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 for the cleanup of releases following termination of the SAF. All monies remaining in the SAF after eligible claims were paid automatically transferred to the RSF. The SAF and the UST tax were scheduled to sunset upon receipt of \$60,000,000 into the RSF, or December 31, 2013, whichever occurred first.

[Laws 2013, Chapter 244](#) consisted of changes which included: 1) delaying the repeal of the SAF and the UST tax until December 31, 2015; 2) reopening the application submission period for claims of corrective action costs; 3) redirecting excess SAF monies to the State

Highway Fund (SHF); and 4) establishing the UST Program Study Committee. Additionally, the FY 2015 Budget Procedures BRB, as amended by [Laws 2015, Chapter 247](#), suspended the transfer of excess SAF monies to SHF beginning January 1, 2015, and contained an intent clause requiring SAF monies to be used to fund and implement a new and revised UST corrective action program.

[Laws 2015, Chapter 247](#) restructured the UST program and extended the repeal of the UST tax until January 1, 2024. Additionally, it provided a mechanism for reimbursement for releases of regulated substances that were properly reported before July 1, 2006, and from July 1, 2006, through January 1, 2016. The legislation limited reimbursement to: 1) up to \$500,000 per facility for an applicant who satisfies the financial responsibility (FR) obligations through a financial assurance mechanism other than insurance; and 2) up to \$1,000,000 per facility for an applicant who satisfies the FR obligations through insurance. Releases that occurred before FR requirement was federally established in 1988 were not eligible for reimbursement under that legislation.

[Laws 2018, Chapter 299](#) extended reimbursement eligibility of up to \$1,000,000 for releases that occurred before the FR requirement was in place. Additionally, [Laws 2018, Chapter 299](#) allows a UST owner or operator that satisfies the FR requirement through insurance to receive additional reimbursement of up to \$500,000 for further corrective action if the owner or operator was in compliance with FR requirements at the time of the release and reported the release between July 1, 2006, and December 31, 2015. The UST owner or operator must participate in the UST Preapproval Program and meet a cost sharing obligation of the first \$50,000 per facility.

### ***BASELINE ASSESSMENT***

Beginning January 1, 2016, and continuing for a seven-year period, an owner, operator or other person who meets the specified

requirements may elect to conduct a baseline assessment, request a grant to cover baseline assessment costs or request ADEQ to perform a baseline assessment.

The ADEQ Director has the authority, subject to available monies in the UST Revolving Fund, to provide a grant to UST sites for the purpose of conducting one or more of the following actions: 1) ensuring the UST, its piping and under-dispense containment comply with standards for new installation, up to a maximum of \$100,000; 2) removal of USTs for the purpose of permanent closure or replacement, up to a maximum of \$20,000 per tank; 3) confirmation of a suspected release at a tank or site, up to a maximum of \$10,000; and 4) obtaining a baseline assessment of a site, up to a maximum of \$30,000. In FY 2016, the ADEQ Director was permitted to distribute up to \$3,000,000 for this grant.

### ***FINANCIAL RESPONSIBILITY (FR)***

State and federal law established in 1988 require a UST owner or operator to have a current FR mechanism in place to pay for both costs of corrective actions (remediation) and third-party liability claims (property and bodily injury) associated with releases from UST systems.

Failure to submit and/or maintain documentation of FR compliance may result in an enforcement action. Enforcement may include the ADEQ Director issuing a stop use order and affixing a tag to stop operation of the UST, civil penalties of up to \$25,000 per day and/or injunctive relief.

There are two separate required FR 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. 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 annual aggregate coverage requirement is a limit or cap on the amount that must be covered per year 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.

Financial mechanisms available to owners and operators include commercial liability insurance/risk retention group, self-insurance, guarantee, letter of credit, surety bond, trusts and certificates of deposit. Local government entities may also use a government fund, bond rating test, government guarantee or government financial test. Owners and operators may use a combination of mechanisms to meet the FR obligations. Documentation demonstrating FR compliance must be submitted to ADEQ on an annual basis.

An owner or operator who satisfies the FR requirements through insurance must have policy coverage that extends to either: 1) the date of the most recent baseline assessment or comparable site characterization; 2) the UST installation date; or 3) the earliest retroactive coverage date of the previous insurance policy or alternative FR mechanism ([A.R.S. § 49-1006.01](#)).

### ***ADDITIONAL RESOURCES***

- Arizona Department of Environmental Quality [www.azdeq.gov](http://www.azdeq.gov)
- Arizona Revised Statutes, Title 49, Chapter 6
- Arizona Administrative Code, Title 18, Chapter 12
- Code of Federal Regulations, Title 40
- U.S. Environmental Protection Agency [www.epa.gov](http://www.epa.gov)