



REPORT HIGHLIGHTS PERFORMANCE AUDIT

Department continues to fail to ensure that UST owners and operators meet financial responsibility requirements

Our Conclusion

The Department of Environmental Quality (Department) is responsible for ensuring that owners and operators of petroleum underground storage tanks (USTs) comply with federal and state financial responsibility requirements. These requirements help ensure that UST owners and operators can pay to clean up leaks and spills and compensate third parties for bodily injury and any property damage incurred. Sites and/or operators of petroleum USTs include service stations, convenience stores, and local governments. The Department continues to fail to ensure that UST owners and operators meet financial responsibility requirements. Although the Department has begun to take steps to identify and address some of the weaknesses with its financial responsibility program, it should take additional steps, including developing policies and procedures to ensure UST owners and operators comply with financial responsibility requirements.



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Financial responsibility requirements intended to minimize public cleanup costs—To protect human health and the environment, federal and state laws require owners and operators of petroleum underground storage tanks (USTs) to have financial resources to clean up spills and leaks. These laws are intended to minimize the number of leaking USTs that are abandoned or “orphaned” by their owners and operators and to ensure that the polluter or responsible party, rather than the general public, bears the burden and cost of cleanup if needed. Federal and state government entities are exempt from the requirements. However, all others with regulated petroleum USTs, including local governments, must comply with the requirements.

There are 12 different mechanisms that owners and operators can use to demonstrate financial responsibility. These include insurance, self-insurance, letters of credit, and other mechanisms. According to department data, as of March 2013, most of the 2,423 facilities with regulated USTs in Arizona used insurance as their financial responsibility coverage mechanism. All USTs are supposed to be registered with the Department, and proof of financial responsibility must be provided at registration.

Department continues to lack current financial responsibility evidence for many USTs—Similar to findings in two prior audits, the Department continues to lack evidence of current financial responsibility for many USTs. The Office of the Auditor General’s 1998 audit report indicated that an estimated 53 percent of UST owners failed to demonstrate financial responsibility, while a 2004 audit report indicated that an estimated 38 percent of UST facilities failed to show compliance with the requirements. Likewise, our review of department data found that as many as 37 percent of UST facilities lacked evidence of current financial responsibility coverage as of March 20, 2013. Specifically, of the 2,423 facilities with regulated USTs, potentially as many as 145 facilities may never have had coverage, while another 746 facilities had expired financial responsibility coverage.

State monies may be at risk—When owners do not maintain financial responsibility, the State can end up paying the costs to clean up leaks and spills. The Department uses two main mechanisms to help pay for UST cleanup: the State Assurance Fund (SAF) and the Regulated Substances Fund (RSF), which are primarily funded through a 1 cent per gallon excise tax. As of April 2013, approximately \$335 million in SAF monies had been used to help clean up 2,664 sites with leaking USTs, an average of \$103,000 per site. However, the excise tax and the SAF are set to expire in December 2015. Further, according to department staff, many USTs may be approaching the end of their expected 30-year lifespan, after which the risk of leaks increases. This could pose a significant expense to the State if owners do

Number and percent of USTs by age As of May 30, 2013

Years	Number of USTs	Percent of USTs
50+	36	<1%
40-49	189	3
30-39	676	10
20-29	2,935	43
10-19	2,000	29
0-9	955	14
Missing	<u>83</u>	<u>1</u>
Total	<u>6,874</u>	<u>100%</u>

not maintain financial responsibility.

Weak department processes and controls over financial responsibility requirements—The Department lacks adequate processes and controls to ensure UST owners and operators meet financial responsibility requirements. Specifically, the Department:

- Registered USTs without proof of financial responsibility as long as the USTs met other technical requirements such as spill and overflow protection. Department staff estimate that only 20 to 25 percent of UST registrations include proof of financial responsibility.
- Conducted only limited followup on facilities with expired financial responsibility. As of March 2013, 746 facilities had expired coverage; however, since November 2012, only 21 letters were sent to UST owners and operators notifying them of expired coverage.
- Did not follow up in instances where department data indicated the facility never had coverage.
- Provided general information to UST owners and operators about the requirement to have financial responsibility in the registration approval letter and annual registration tank invoice, but did not notify owners and operators of any noncompliance, and few owners and operators submitted updated financial responsibility documents.
- Rarely enforced financial responsibility requirements unless noncompliance was discovered during an inspection. Financial responsibility violations were cited in 40 percent of UST inspections in fiscal year 2012.
- Accepted documentation of financial responsibility that did not meet regulatory requirements.

In addition, the Department's database did not accurately reflect all facilities' financial responsibility coverage or lack of coverage, or had accurate information about facilities that are covered under a different name.

Department has begun taking steps to address weaknesses, but additional actions needed—The Department has hired an experienced manager to oversee the UST financial responsibility program and improve its processes. The program manager has begun implementing various actions to strengthen the program, including improving the usability of its database to monitor compliance with financial responsibility requirements; educating both internal and external stakeholders on financial responsibility requirements; leveraging partnership opportunities to facilitate its outreach activities; and developing a strategic plan to further improve the program, including initiating enforcement action in response to failure to submit evidence of financial responsibility rather than waiting on inspections.

The Department should take additional steps to ensure that UST owners and operators comply with financial responsibility requirements, including developing and implementing up-to-date written policies and procedures, developing and providing training to staff on required financial responsibility documentation, conducting routine review of staff's work, and improving communication and coordination between the registration and financial responsibility staff.

Recommendations

The Department should:

- Continue its efforts to make program improvements;
- Develop and implement updated policies and procedures; and
- Ensure that staff accurately determine that evidence of financial responsibility meets requirements and take timely and appropriate action when owners and operators are found to be in noncompliance.