

## REPORT HIGHLIGHTS PERFORMANCE AUDIT

### Subject

The Waste Programs Division has primary responsibility for regulating underground storage tanks (USTs) such as those containing petroleum products, solid waste such as refuse in landfills, and hazardous waste such as arsenic and dry cleaning solvent.<sup>1</sup> The Division also oversees the cleanup of hazardous waste sites.

<sup>1</sup> Effective August 2004, UST regulation is in the new Tank Programs Division.

### Our Conclusion

Recent legislation made significant changes to the State Assurance Fund (Fund). However, action is needed to ensure UST owners and operators maintain required financial assurance and to reduce fund costs. Also, the Division should improve the timeliness of its hazardous waste enforcement actions.



2004

## Changes Made To State Assurance Fund, and Additional Actions Needed

The State Assurance Fund provides qualifying owners and operators of leaking underground storage tanks (USTs) with up to \$500,000—and in some cases \$1 million—to clean up the contaminated site. Fund revenue comes from a \$0.01 per gallon excise tax on regulated underground tanks (USTs), based on the quantity of regulated product placed in a tank in a calendar year.

**Fund to be phased out**—In May 2004, legislation was passed making several important changes to the Fund. First, the legislation allows UST owners and operators to access the Fund before accessing their private financial assurance. Federal and state laws require UST owners to have a minimum level of financial assurance to cover costs associated with the cleanup of leaking USTs. Additionally, the legislation set June 30, 2006, as the last day that a UST leak could be reported to be eligible for fund cleanup assistance. Finally, the legislation created a Regulated Substance Fund to succeed the State Assurance Fund.

**Funds for orphan tank cleanup may be limited**—The Regulated Substance Fund is supposed to provide for the cleanup of leaking UST sites for which the UST owners cannot be located, but funding for this purpose may be limited. The legislation provides that the Regulated Substance Fund will receive a transfer of funds from the State Assurance Fund on July 11, 2011, if all of its claims have been paid. However, if the State

Assurance Fund claims have not been paid by that date, the transfer of funds will not occur until the claims are paid. Further, the Regulated Substance Fund is scheduled to begin receiving funding from the \$0.01 per gallon excise tax when all the State Assurance Fund claims are paid. Therefore, the Regulated Substance Fund would not receive funding from the excise tax until after all claims were paid, even if that date is after July 1, 2011.

As a consequence, since the State Assurance Fund and the excise tax terminate on December 31, 2013, regardless of whether all claims have been paid, funding for the Regulated Substance Fund will be limited if all State Assurance Fund claims are not paid by July 1, 2011. Additionally, if the claims are not paid by December 31, 2013, the Regulated Substance Fund may receive no funding for orphan tank cleanup.

**Division needs to ensure owners obtain financial assurance**—The Division needs to ensure that owners obtain financial assurance. As of January 2004, the Division could only confirm that 62 percent of USTs are in compliance with the state and federal financial assurance requirements. Although this was an increase from 52 percent in October 2003, the Division needs to continue its efforts to increase compliance. If owners do not comply with these requirements, the Fund or the new Regulated Substance Fund may have to pay for future contaminated site cleanup.

### Cost ceilings should be re-examined—

The Division established cost ceilings as a way to control cleanup costs paid from the Fund. However, some stakeholders believe that persons conducting the cleanups are simply charging the ceiling amount rather than the actual cleanup costs.

The Division should determine whether contractors are charging the cost ceilings instead of the actual cleanup cost. The Division should also implement a better methodology for setting its cost ceilings.

Requiring competitive bidding for cleanup may also reduce costs below ceilings. This may allow the market to control costs. However, this would require a statutory change.

## Recommendations

The Department should:

- Continue to work on increasing the level of compliance with financial assurance requirements.
- Determine whether contractors are charging the cost ceiling instead of the actual cost of work.
- Establish a more appropriate methodology for creating the cost ceilings.
- Examine the feasibility of using competitive bidding to control costs paid by the Fund.

## Division Should Improve Hazardous Waste Enforcement

The Division is responsible for regulating facilities that generate, treat, store, or dispose of hazardous wastes. The Division regulates these facilities by conducting inspections and, when a violation is found, taking enforcement actions.

The Division takes enforcement action for both minor and major violations. A minor violation is one that poses minimal risk to human health and the environment, such as a failure to pay a hazardous waste fee. By comparison, a major violation poses a risk to human health and the environment, such as failure to correctly identify waste that is shipped off-site for disposal.

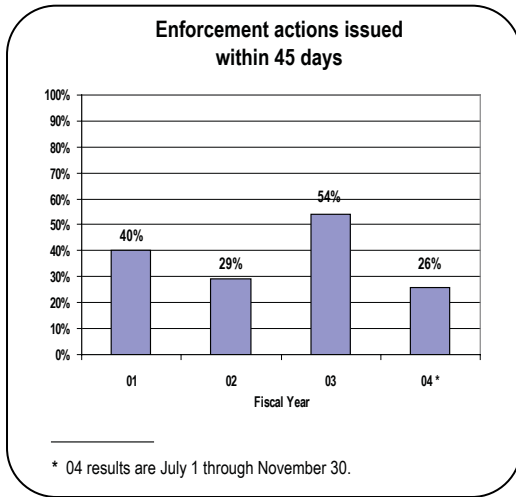
The Division may handle minor violations informally by issuing either a:

- **Notice of Opportunity to Correct (NOC)**—Notice of an insignificant violation that needs to be fixed; or
- **Notice of Violation (NOV)**—Notice of a significant violation that needs fixing.

The Division may handle major violations either informally, as indicated above, or by using a formal action. Formal actions include:

- **Compliance order**—An appealable action requiring a facility to correct a violation.
- **Consent order**—A mutual agreement that a facility will correct a violation.
- **License suspension or revocation**—Effective for a period of time to cure a violation.
- **Civil action**—Legal action taken, such as an injunction or a restraining order, by referral to the Attorney General.

**Division should issue enforcement actions more quickly**— If an inspection finds a violation, the Division’s policy requires it to issue an informal enforcement action within 45 days. However, as shown in the figure below, the Division often fails to do so.



The Division notifies the facility of serious violations in writing at the time of the inspection. However, not as much detail and information is included as on the official enforcement action. Further, the responsible party may be unaware of the less serious violations.

Although the Division’s performance improved somewhat in 2003, it declined again through November of fiscal year

2004. In February 2003, additional internal reviews of enforcement actions were added to increase the amount of oversight over the process. However, the Department did not establish time frames for such reviews.

**Some facilities slow to return to compliance**—When the Division does issue an enforcement action, it specifies how quickly the facility must return to compliance—generally between 5 and 90 days for formal actions. However, about one-third of the time facilities do not return to compliance within the specified time frames.

In some cases, facilities may take years to comply with an enforcement action. For example, as of November 30, 2003, there were six cases from fiscal years 2001 and 2002 that were still open.

The Division does not always escalate enforcement actions when facilities do not return to compliance within the prescribed time period. The Division’s policy is to escalate informal and formal enforcement actions if facilities do not reach compliance within the time frames. However, the Division had not escalated any of the 35 informal enforcement actions auditors reviewed in which the facilities had not come into compliance with specified time frames.

## Recommendations

The Department should:

- More quickly notify facilities of violations.
- Consider setting time frames for the internal review of proposed enforcement actions.
- Track the status of enforcement actions and escalate them to the next level as necessary.

# Superfund Cleanup in Arizona

The federal Environmental Protection Agency (EPA) and the State's Water Quality Assurance Revolving Fund (WQARF) manage cleanup of Arizona sites contaminated by hazardous substances.

The Legislature created WQARF in 1986 and made major reforms in 1997. The reforms established the following:

- Program funding comes from corporate income tax and transfers from other state revenue.
- Proportional liability for cleanup whereby responsible parties pay only for the cleanup of contamination they were responsible for at the site.
- More options for businesses to settle costs for cleanup.
- More flexible cleanup standards.

The cleanup of a site contaminated by hazardous waste begins with a site investigation. Responsible parties are then identified. After that, a final cleanup remedy is decided upon.

Because responsible parties fund some of the cleanup cost, identifying such parties is an important and time-consuming process. Sometimes the parties are bankrupt or deceased.

It was originally anticipated that responsible parties would provide 65 percent of the costs of cleanup. However, when responsible parties cannot be found or are not viable, stakeholders expect that money from responsible parties for cleanup will be much less. This means that the WQARF will have to pay for part or all of the cleanup.

Since July 1997, according to the Department, it has collected \$12.4 million from responsible parties and spent \$6.1 million trying to find them. The Department estimates that parties working on their own to clean up sites have spent over \$120 million at 12 sites.

## TO OBTAIN MORE INFORMATION

A copy of the full report can be obtained by calling  
**(602) 553-0333**



or by visiting our Web site at:  
[www.auditorgen.state.az.us](http://www.auditorgen.state.az.us)

Contact person for this report:  
Lisa Eddy

### Status of the 33 WQARF Sites

- 10 sites are awaiting investigation.
- 16 sites are undergoing or have just completed investigation.
- 1 site is receiving a feasibility study.
- 1 site is beginning the process to propose a final remedy.
- 2 sites have proposed final remedy plans.
- 3 sites are completing the work on a final remedy.