



UST Insurance Lessons Learned



2018 National Tanks Conference

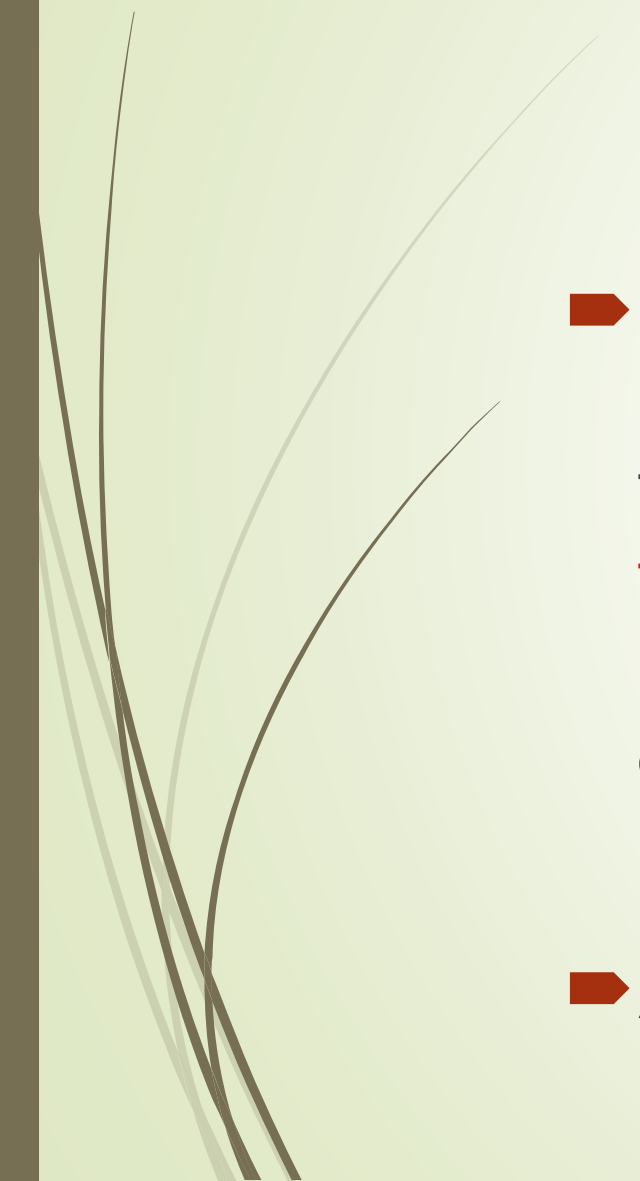
Louisville, Kentucky

September 11, 2018

Jill Williams- Hall, M.P.A. – Delaware Department of Natural Resources and Environmental Control



Financial Responsibility: The Basic Ingredients

- Owners and Operators of petroleum USTs must show proof of Financial Responsibility for taking Corrective Action and Compensating third parties for Bodily Injury and Property Damage caused by accidental releases arising from the operation of petroleum USTs.
 - Amount and Scope
- 



Financial Responsibility: The Big 2

- State Funds - 44+ different recipes
- Insurance - ~15 different recipes

<https://www.epa.gov/sites/production/files/2018-03/documents/listofknowninsuranceproviders.pdf>



The 3 Guiding Principles of Financial Responsibility

- 1) the certainty that funds will be available;
- 2) the sufficiency of funds to cover the costs of releases;
- 3) the availability of funds for corrective action and third-party liability

■ <https://www.epa.gov/sites/production/files/2014-09/documents/40cfr280-281preamble.pdf>



Insurance: Who are the Players?

- **Insurance company/Insurance Carrier/ Insurer** – The Company that writes the policy, accepts the premium payments, pays the claims
- **Agent/Broker/Producer** – Middleman between the insured and the insurance company. The producer finds you a policy from an insurance company licensed in your state.
- **Policy Holder** – Entity that holds the contract with the insurance company

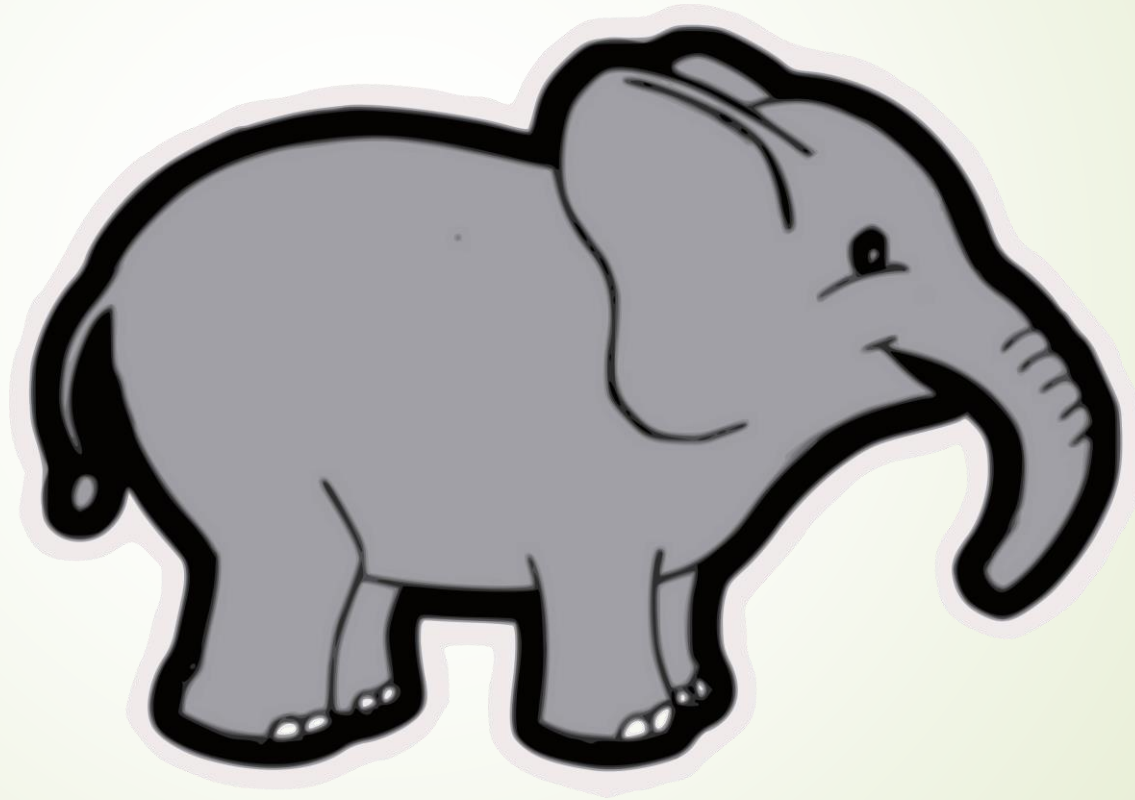



Insurance:

The 7 MUST
HAVES

Verify	Carrier with state insurance
Verify	Tank schedule with insurance matches tanks registered with the state
Verify	Per-occurrence and annual aggregate amounts
Verify	1st dollar coverage
Verify	Cancellation effective only upon written notice after 60 day expiration
Verify	Extended Reporting Period (6 months)
Verify	There are no exclusions that are not acceptable

How do you eat an Elephant?



A decorative graphic on the left side of the slide. It features a dark red arrow pointing to the right at the top. Below it, several thin, dark grey lines curve downwards and to the left, resembling stylized grass or reeds.

The Key to
Success:
Verification

Certificate of Insurance

40 CFR 280.97

Policy

Do not pass Go.....

- ✓ Verify Carrier/Surplus Lines with state insurance department
- ✓ Lookup
 - ✓ <https://sbs.naic.org/solar-external-lookup/>



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40 CFR 280.97 Certificate of Insurance



HOW???

Worded **exactly** as found in 40CFR 280.97:

Includes a tank schedule

Includes Amount and Scope

Includes required 1st first dollar language

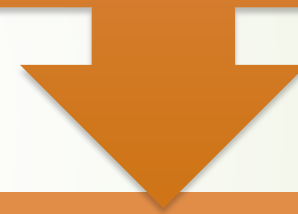
Includes required Cancellation Notification

Includes required Extended Reporting Period (Tail)



HOW???

Insurance Policy



Examine the policy for any exclusions that do not comply with 40 CFR 280.97



Voluntary Exclusions

- ▶ Voluntary Tank Removal Exclusions
- ▶ Voluntary Investigation Exclusions

Memorandum from EPA-OUST, dated 8/3/2018

“If a tank removal or tank site investigation reveals contamination from an UST release, the UST insurance policy must not exclude insurance coverage for the cleanup of the release or an third-party damages that may result.”

[UST Technical Compendium: Financial Responsibility | Underground Storage Tanks \(USTs\) | US EPA](#)



Unacceptable Exclusions

- ▶ “any claim arising out of, caused by, resulting from, contributed to, or in any way related to any pollution incident discovered during any voluntary removal or any UST system”
- ▶ “This policy does not apply to any claim arising out of or discovered as a result of any removal or replacement of any UST system”
- ▶ “Voluntary investigation means any investigation of environmental conditions or storage tank system undertaken, instigated, or directed by the insured of any actual or prospective or any actual or prospective tenant, landlord, lessor, lender, leese, purchaser or agent thereof of a scheduled facility utilizing sampling or testing of soil, groundwater, or surface water”

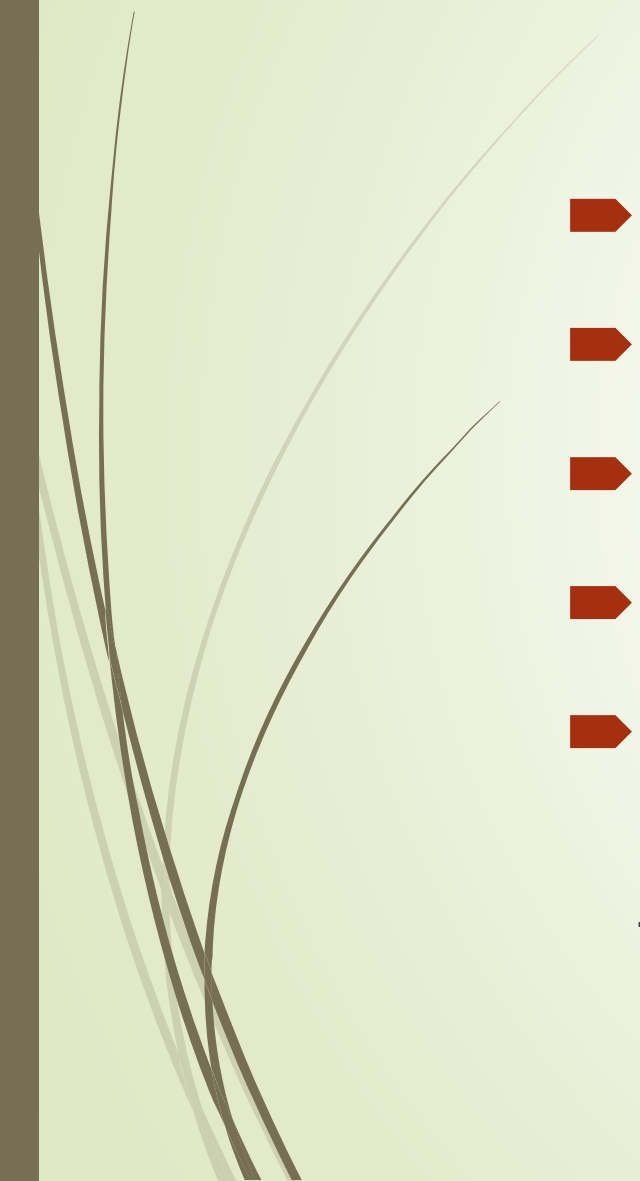


Self Insured Retention

- A self-insured retention is the dollar amount an owner must pay before the insurance policy starts paying.
- Self-insured retentions do not comply with the 1st dollar requirement.



Emerging Issues

- Aging USTs
 - Higher Premiums
 - Non-Renewals
 - Self-Insured Retention
 - Policies for Aging Tanks that have upgraded with new “tank in a tank” technologies
- 



Is Insurance Working?

Arizona (<http://www.azdeq.gov/>)

- ▶ Partial State Fund – eligibility ended in 2006
- ▶ 1st state to collect data

2015 Legislation set requirements to answer the big 3:

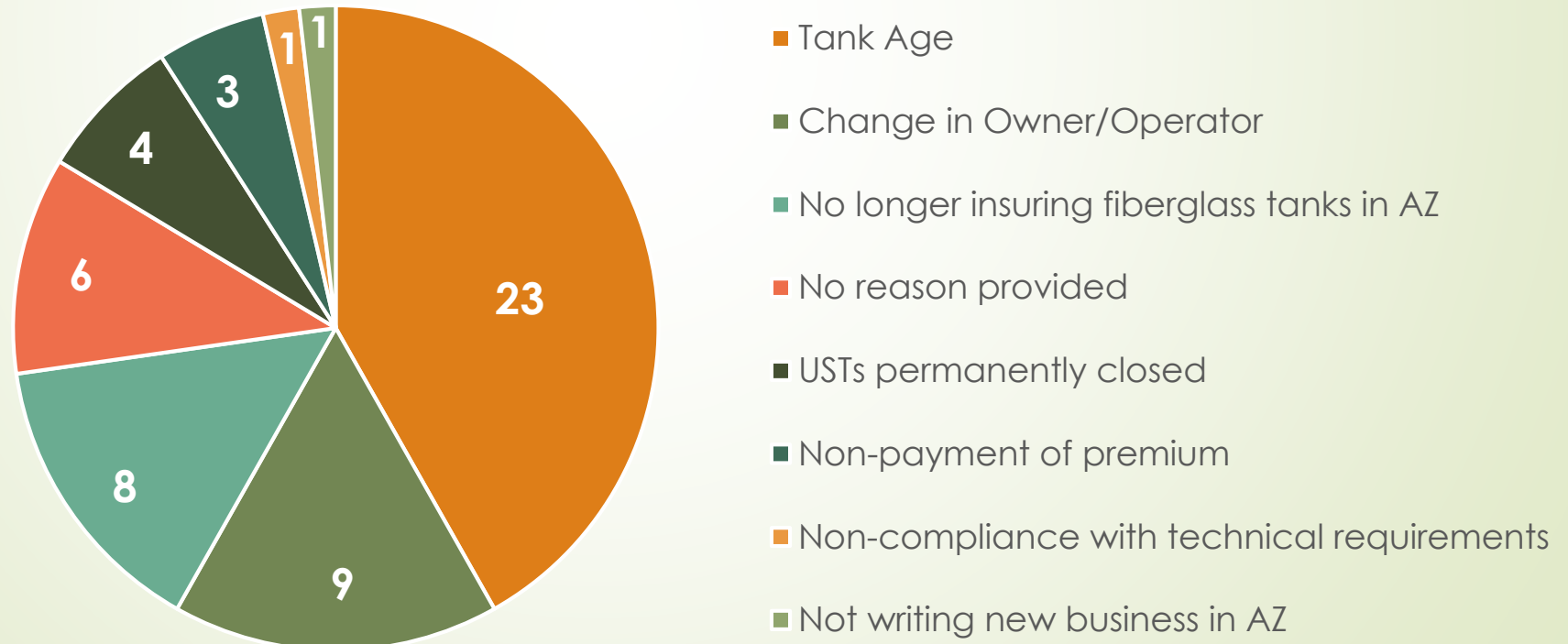
Is UST insurance available?

Is UST insurance affordable?

Is UST insurance providing coverage for claims?

Is UST Insurance Available?

- Insurers are required to notify ADEQ within 30 days after the date of termination or nonrenewal. A.R.S. § 49-1006.01.B
- Below is a summary of insurance cancellations, terminations and notices of non-renewal received from January 2016 through August 2018 (total 55):



Is UST Insurance Affordable?

- ▶ The affordability issue appears to have the greatest impact on single-location UST owners – especially those with “older” systems.
- ▶ The information below is based on a sample set of single-location owner records:

Premium	% of Owners in Sample Set
\$350 - \$2,500	49%
\$2,500 - \$5,000	35%
\$5,000 - \$10,000	5%
\$10,000 - \$25,000	4%
\$25,000 - \$30,000	2%
> \$30,000	5%

Deductible	% of Owners in Subset
\$2,500 - \$5,000	40%
\$10,000 - \$20,000	14%
\$25,000 - \$50,000	35%
\$100,000 - \$500,000	12%



Is UST Insurance Providing Coverage for Claims?

- ▶ HB 2636 established a *two year insurance review period* (effective January 1, 2016) which requires an owner or operator who makes a claim against insurance or alternative financial assurance mechanism **to provide ADEQ a copy of any denial or other evidence of nonpayment.**
- ▶ UST owners or operators may request ADEQ's assistance in pursuing their claim for coverage against their financial responsibility mechanism.




Opportunities for Data Collection

- ▶ HB 2636 established two new programs that provide financial assistance with corrective action costs. It also expanded the ability for UST owners and operators to use the State Lead program.

Time Barred Claims

- ▶ Section 25 of HB 2636 allowed UST owners and operators to request reimbursement for cleanup costs incurred from July 1, 2010 - December 31, 2016 *if those costs were not covered by their FR mechanism.*



THE CLOCK IS TICKING... ACT NOW!
Receive Funds to Clean Up Leaking Underground Storage Tanks

ADEQ is now accepting applications for the UST Time-Barred Claims Program

If you are an Underground Storage Tank (UST) owner or operator who was “time-barred” from submitting costs after the sunset of the former State Assurance Fund (SAF), you may still qualify for up to 90% reimbursement.

To find out if you are eligible and learn more, visit: azdeq.gov/ust/time-barred

DEADLINE TO APPLY: Dec. 31, 2016

Preapproval and State Lead

- Requires UST owners or operators relying on UST insurance for FR compliance (with a deductible less than \$50,000) to *demonstrate they have filed a timely claim and pursued it through denial.*
- Requires other UST owners or operators with a high deductible to *demonstrate compliance with FR and timely notice to UST insurers* (if that is their financial assurance mechanism) and to demonstrate that they have paid a “cost share” of \$50,000 in corrective action costs incurred after January 1, 2016 for the facility.

UST Preapproval Program

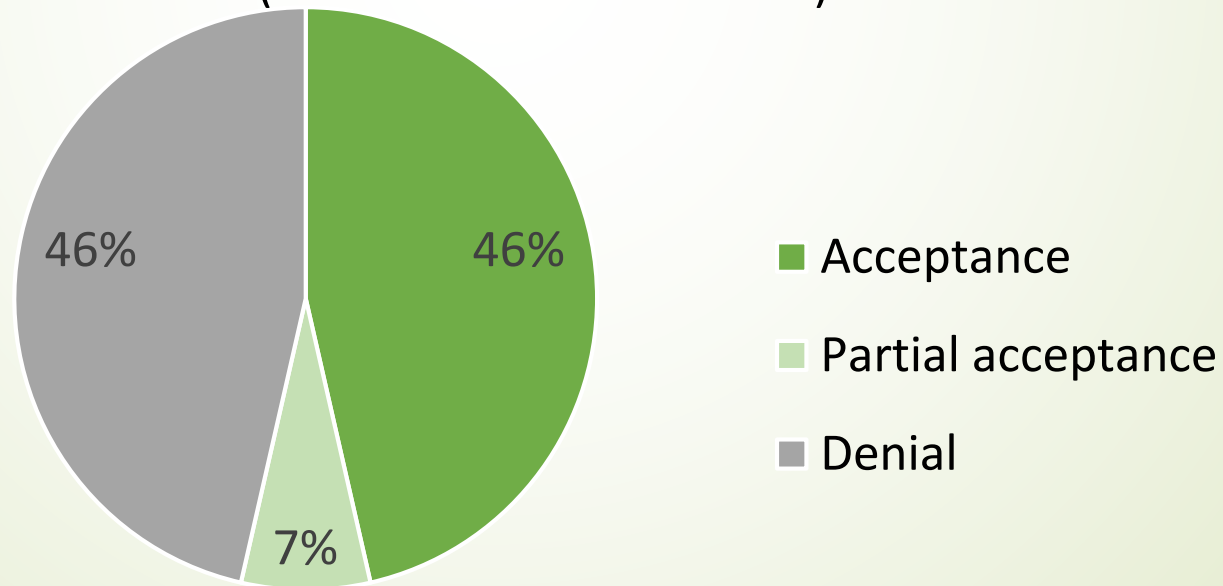
Provides funds for corrective action costs not covered by a financial assurance mechanism. To find out if you are eligible and learn more, visit:

azdeq.gov/ust/preapproval

Claim Coverage

- UST insurance claim and coverage information summary based on documentation provided to ADEQ through the Preapproval and Time-barred Claims programs:

UST Insurance Claim Coverage Determinations
(current data set size – 28)





Responses to Claims Filed

Contamination was found during UST removal:

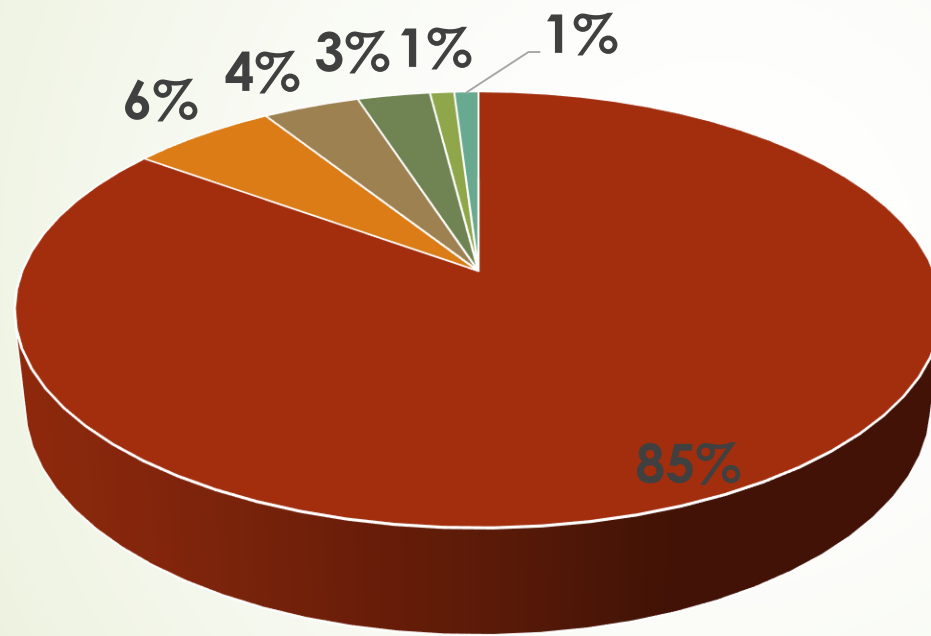
- Insurance was not notified of the proposed tank removal or the release per the policy
- *Release occurred prior to policy period*
- Contamination was not from a scheduled system
- *Release was in the dispenser area, so it is not from an UST*



What has Arizona learned?

- The information provided suggests that UST owners and operators often interpret a reservation of rights letter as a coverage denial.
- Many UST owners and operators do not seem to understand the requirements, conditions and exclusions in their policies.
- UST owners are not typically thinking of the notification requirements in their insurance policies when they have a suspected release, they contemplate selling their station (phase II sampling) or they consider closing their system.
- Many UST owners and operators do not value the importance of keeping their records – especially records related to the cleanup of releases (< 25 gallons) that are related to spills and overfills.

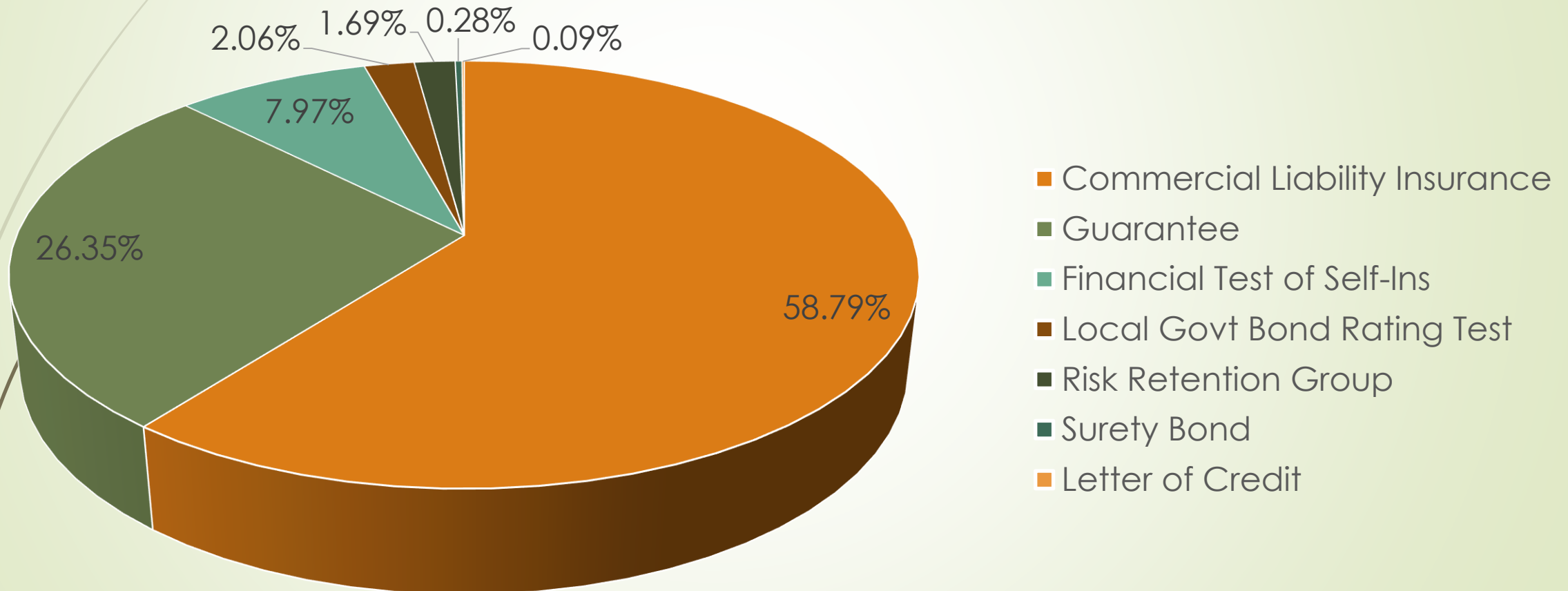
Type of FR by Facility - 2014



- Commercial Liability Insurance
- Financial Test of Self-Insurance
- Corporate Guarantee
- Government Mechanisms
- Risk Retention Group
- Other Mechanisms

Type of Facility – 2017

After implementation of HB 2636



Resources

- OUST FR compendium: <https://www.epa.gov/ust/ust-technical-compendium-financial-responsibility>
- Financial Responsibility Manual: <https://www.epa.gov/ust/ust-technical-compendium-financial-responsibility>
- LUSTLine Articles: <http://neiwpc.org/our-programs/underground-storage-tanks/l-u-s-t-line/>
- ASTSWMO Aging Tanks report: <http://astswmo.org/an-analysis-of-ust-system-infrastructure-in-select-states/>
- ASTSWMO Guide to Tank Insurance: <http://astswmo.org/guide-to-tank-insurance/>