ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE PERSPECTIVE – INSURANCE CLAIM DENIALS

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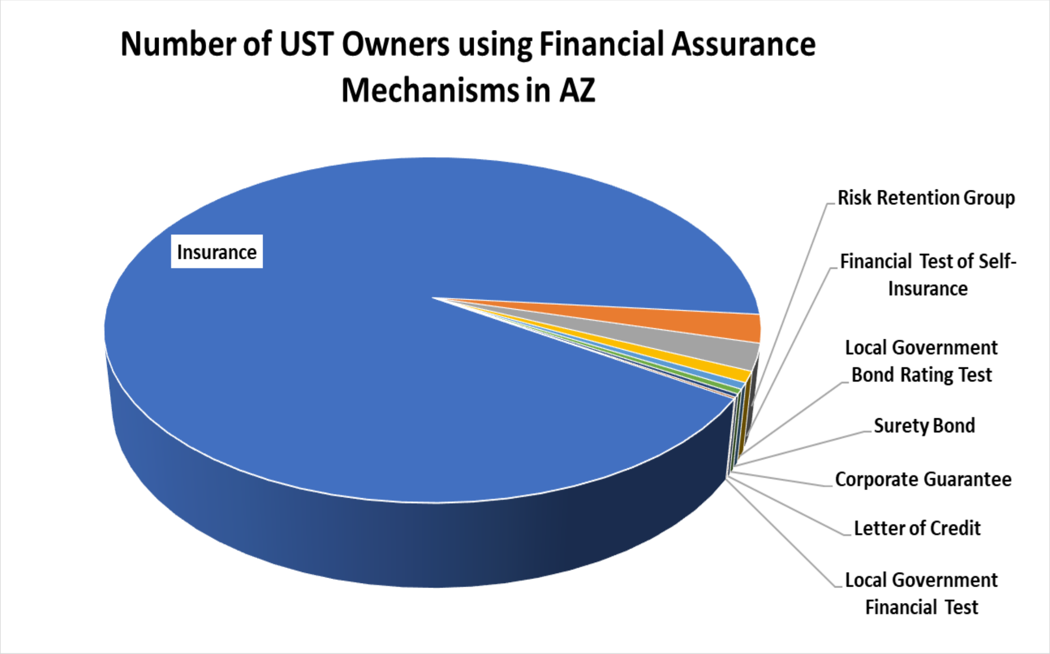
STATE PERSPECTIVE: WHY IS ANALYZING INSURANCE DATA IMPORTANT FOR ADEQ?

Most Arizona UST owners and operators rely on UST insurance to demonstrate compliance with financial responsibility requirements.

- No state fund to provide financial assurance.
- Arizona UST owners and operators rely upon their selected financial assurance mechanisms for cleanup contamination.

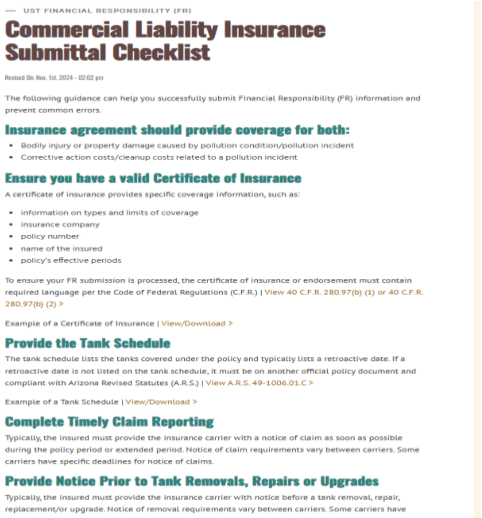
STATE PERSPECTIVE: NUMBER OF UST OWNER/OPERATORS PER FINANCIAL ASSURANCE MECHANISM



FR Mechanism	# of UST Owners	# of Facilities (% of Total)
Insurance	632	1340 (66.8%)
Risk Retention Group	18	22 (1.1%)
Financial Test of Self-Insurance	17	39 (1.9%)
Local Government Bond Rating Test	7	38 (1.9%)
Surety Bond	4	7 (0.3%)
Corporate Guarantee	3	556 (27.7%)
Letter of Credit	2	2 (0.1%)
Local Government Financial Test	1	2 (0.1%)

STATE PERSPECTIVE: ADEQ UST FINANCIAL RESPONSIBILITY PROGRAM RESOURCES

- ADEQs UST web pages have resources on financial responsibility for UST owners and operators.
- Resources include providing information on what to expect when making an insurance claim.


— UST FINANCIAL RESPONSIBILITY (FR)

Commercial Liability Insurance Submittal Checklist

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The following guidance can help you successfully submit Financial Responsibility (FR) information and prevent common errors.

Insurance agreement should provide coverage for both:

- Bodily injury or property damage caused by pollution condition/pollution incident
- Corrective action costs/cleanup costs related to a pollution incident

Ensure you have a valid Certificate of Insurance

A certificate of insurance provides specific coverage information, such as:

- information on types and limits of coverage
- insurance company
- policy number
- name of the insured
- policy's effective periods

To ensure your FR submission is processed, the certificate of insurance or endorsement must contain required language per the Code of Federal Regulations (C.F.R.) | View 40 C.F.R. 280.97(b) (1) or 40 C.F.R. 280.97(b) (2) >

Example of a Certificate of Insurance | View/Download >

Provide the Tank Schedule

The tank schedule lists the tanks covered under the policy and typically lists a retroactive date. If a retroactive date is not listed on the tank schedule, it must be on another official policy document and compliant with Arizona Revised Statutes (A.R.S.) | View A.R.S. 49-1006.01.C >

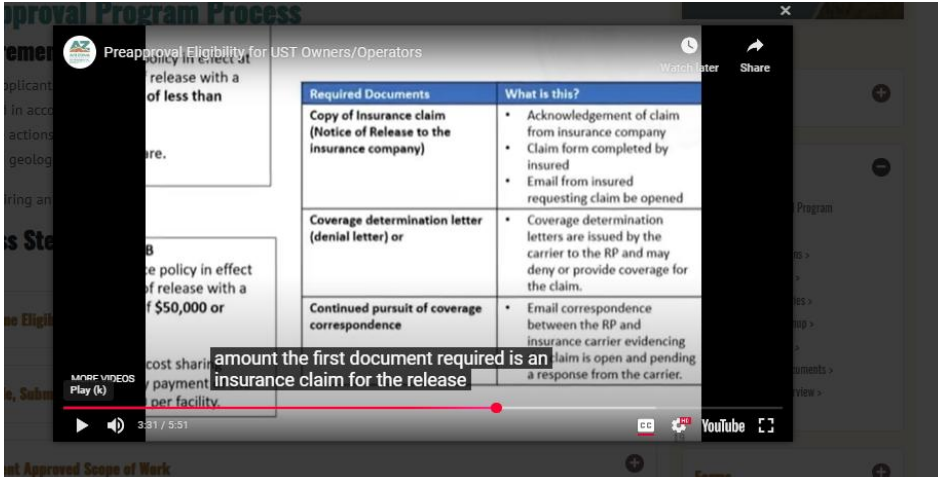
Example of a Tank Schedule | View/Download >

Complete Timely Claim Reporting

Typically, the insured must provide the insurance carrier with a notice of claim as soon as possible during the policy period or extended period. Notice of claim requirements vary between carriers. Some carriers have specific deadlines for notice of claims.

Provide Notice Prior to Tank Removals, Repairs or Upgrades

Typically, the insured must provide the insurance carrier with notice before a tank removal, repair, replacement/or upgrade. Notice of removal requirements vary between carriers. Some carriers have

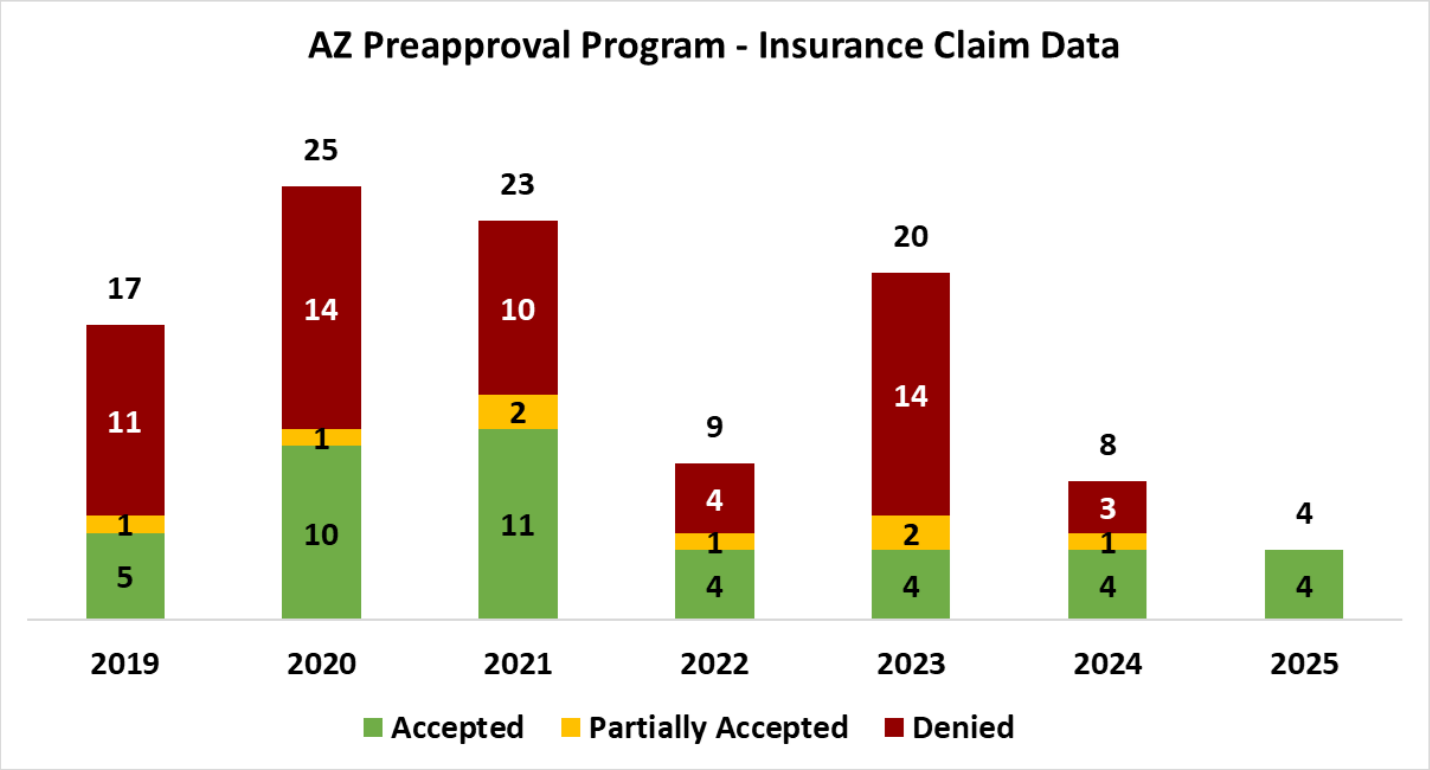


STATE PERSPECTIVE: BACKGROUND ON ARIZONA UST INSURANCE CLAIM DATA

- ADEQ has been collecting information on the effectiveness of insurance coverage for many years.
- In 2015, legislation included a requirement for UST owners and operators to report coverage denials, terminations and non-renewals.
- Most of this information was provided through time-barred claims submittals and the Corrective Action Preapproval Program (“Preapproval Program”).
- ADEQ’s Preapproval Program: provides financial assistance to owners and operators in compliance with financial responsibility for corrective action costs not covered by their financial assurance mechanism(s).

NOTE: The majority of applicants use UST insurance; however, the applicant with the greatest number of Preapproval Program applications relies on a corporate guarantee to demonstrate compliance with financial responsibility.

STATE PERSPECTIVE: ADEQs CLAIM DETERMINATION DATA



STATE PERSPECTIVE: MOST COMMON REASONS FOR INSURANCE DENIALS PROVIDED TO ADEQ

1. Contamination is associated with a historical release that did not occur during the effective period for the UST insurance policy.

Example: Historic Release Denial
Factual Information:
• The applicable policy period for this site was October 2022-October 2023. Retroactive date - October 2020.
• March 2023 - the insured notified the insurance company of a release found during tank removal.
• The insurance company's investigation revealed that the site had a historical release prior to the 2023 release.
Result:
• The insurance company denied because they determined the contamination was associated with historic release that occurred before the retroactive date.

STATE PERSPECTIVE: MOST COMMON REASONS FOR INSURANCE DENIALS PROVIDED TO ADEQ CONTINUED…

2. The insured did not prove that the release occurred during the insurance policy period.

Example: No Evidence Proving Release Occurred During the Policy Period
Factual Information:
• The applicable policy period for this site was July 2021-July 2023. Retroactive date – July 2021.
• February 2022 - the insured notified the insurance company of a release found during tank removal.
Result:
• The insurance company did not accept coverage because there was no evidence demonstrating that the release came from one of the tanks covered under the policy.

STATE PERSPECTIVE: MOST COMMON REASONS FOR INSURANCE DENIALS PROVIDED TO ADEQ CONTINUED…

3. The site had pre-existing contamination excluded by known contamination clause.

Example: Pre-existing/Known Contamination
Factual Information:
• The applicable policy period for this site was December 2021-December 2022. Retroactive date – March 2013.
• October 2022 - the tanks were removed due their age. The tanks were installed in 1985. Contamination was found after the tanks were removed. • The claim was reported to the insurance company October 2022.
Result:
• The investigation by the insurance company found that the contamination was originally identified in a 2008 site characterization report provided to the agency.
• The outcome of the investigation supports the contamination first became known prior to the policy inception date.

Other Important Findings on UST Insurance Policies

- Arizona has found that UST insurance policies are continuing to include:
  - Voluntary Site Investigation Exclusions;
  - Self-Insured Retentions” clauses in insurance policies;

These exclusions and type of retentions do not comply with Federal & State UST regulations.

- Patterns of higher insurance deductibles for UST policies, including endorsements that significantly increase the deductible amount for contamination identified under certain circumstances.

Financial Responsibility (“FR“) Resources and Info Available in Arizona

FR Resource	Description
UST FR OPTIONS – https://azdeq.gov/ust/fr-options	Defines and list options for FR compliance (e.g. UST pollution insurance)
ALTERNATIVE FR MECHANISMS https://azdeq.gov/ust/alternative-forms-fr	Defines and list options for FR compliance that are not associated with insurance.
FR INSURANCE CHECKLIST https://azdeq.gov/ust/fr-insurance-checklist	Describes criteria needed in a compliant FR policy.
RETROACTIVE DATE FACT SHEET https://static.azdeq.gov/ust/retrodates_fs.pdf	Defines retroactive dates and steps needed to resolve a policy with non-compliant retrodate.