



MISSISSIPPI DEPARTMENT OF
ENVIRONMENTAL QUALITY

**Underground Storage Tank Program
Resource Needs and Fee Recommendation**

State Fiscal Year 2022

Final Report
May 20, 2021

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I. EXECUTIVE SUMMARY

The Mississippi Department of Environmental Quality (MDEQ) prepared this annual report for the Commission on Environmental Quality (CEQ). The MDEQ and the Underground Storage Tank (UST) Advisory Council conducted a review of the UST fund balance, the UST work plan, estimated revenues, projected expenditures and estimated active USTs, and prepared a report to establish the UST annual tank fee recommendation for Fiscal Year (FY) 2022 (July 1, 2021 to June 30, 2022). This report includes an explanation and documentation supporting the fee recommendation.

A. REVIEW OF UST ANNUAL FEE RATE AND REVENUE

The following is a review of UST annual fee rate and revenues:

UST Program Tank Fee Review				
Fiscal Year	Annual Tank Fee per UST	Active USTs	Billed Tank Fees	Actual Revenue*
2012	\$100	7371	\$737,100	\$760,600
2013	\$100	7254	\$725,400	\$757,050
2014	\$100	7125	\$712,500	\$734,325
2015	\$100	7082	\$708,200	\$749,000
2016	\$100	6972	\$697,200	\$728,900
2017	\$100	6935	\$693,500	\$720,625
2018	\$100	6923	\$692,300	\$715,925
2019	\$100	6875	\$687,500	\$711,100
2020	\$100	8075**	\$807,500	\$806,355
2021	\$150	7985 **	\$1,197,750	\$1,130,300 (to date)
2022	\$150	7885 (estimate)**	\$1,182,750 (estimate)	\$1,130,300 (estimate)

* Actual revenues include late tank fee payments that were not included in the original billed tank fees

** Includes temporarily out of service USTs

B. FEE RECOMMENDATION

Calculation of Fee Requirement

Estimated FY2022 Starting Fund Balance	\$ 60,000
Estimated FY2022 Budget	\$ 1,634,500
Recommended Fee for FY2022	\$ 150/tank
Estimated FY2022 Tank Fee Revenue	\$ 1,130,300
Estimated FY2021 EPA LUST Prevention Grant	\$ 460,000
FY2022 Ending Fund Balance	\$ 15,800

The UST Advisory Council has recommended that the annual UST tank fee for FY2022 should remain at \$150 per tank.

The starting fund balance for FY2021 was approximately \$130,000. The UST Tank Fee Fund had been predicted to be in a deficit status starting FY2021. However, due to significant staff turnover and associated salary savings, the FY2020 UST Program expenditures were \$510,000 below the UST Program projected budget; thereby allowing the estimated FY2022 starting fund balance of \$60,000.

The UST Advisory Council and MDEQ believe that based on historic UST Program spending and revenue collection amounts, the UST fee can remain at \$150 per active tank, assuming the FY2021 EPA LUST Prevention Grant is awarded by EPA.

II. UST PROGRAM BACKGROUND

The UST program creation occurred in 1988 by the Mississippi Underground Storage Tank Act of 1988, Section 49-17-401 through 49-17-435 (hereafter referred to as the “UST Law”). The UST program is tasked to regulate the UST community through: education, training and certification programs; routine inspection of all facilities; enforcement of compliance; and, assessment and remediation of contaminated media at Leaking USTs (LUST). The administrative costs associated with the UST Program are funded primarily through a tank fee. As with many other programs, unfunded federal mandates cause these administrative fees to increase.

For twenty-one (21) years (1998 to 2019), the UST fee remained at \$100/active tank. Beginning in 2009 with a trend to move from three (3) single compartment USTs (\$300 in annual tank fees) towards one (1) multi-compartment UST (\$100 in annual tank fee) the UST program has seen a corresponding steady decline in annual tank fee revenue.

In 2015, MDEQ forecast the UST Program would begin operating in a deficit in Fiscal Year 2019 if the tank fee was not increased. Therefore, MDEQ partnered with the UST Program stakeholders, the Mississippi Petroleum Marketers and Convenience Store Association (MPMCSA), to begin the legislative process to increase the annual tank fees. Through collaboration, it was determined the most effective means to determine appropriate annual UST fees would be through the creation of a UST Advisory Council that would work similar to the Title V Advisory Council that recommends the annual Title V Fees to the Commission.

After three legislative sessions, the 2018 Mississippi Legislative Session resulted in three (3) significant statutory changes to the MDEQ UST Program. The first statutory change created the Underground Storage Tank Advisory Council. The second statutory modification changed the annual UST fee structure. The established UST annual fee was changed from a flat rate of \$100 per tank/year to an annual fee ranging between \$100 per tank/year to \$200 per tank/year with the annual fee to be set by MDEQ’s Commission on Environmental Quality (CEQ). The third statutory modification changed the definition of “active” to include USTs listed as temporarily out of service. This change allowed the UST Program to begin charging an annual tank fee for temporarily out of service USTs, as the UST Program is still required to monitor, inspect, and clean up temporarily out of service UST locations.

In May 2019, MDEQ began implementing the third statutory change that allowed annual billing for temporarily out of service USTs along with the active USTs. The Fiscal Year 2020 tank fee billing period saw an increase of billed annual fees of \$120,000 due to this statutory change. Also, in May 2019, a quorum of council members was named, which allowed the funding review process to begin.

In July 2019, the first UST Advisory Council meeting was held. The UST Advisory Council is comprised of five members that represent UST tank owners, UST contractors, and an UST engineering firm. The UST Council is responsible for determining funding needs and making recommendations to the CEQ regarding any changes in the annual UST fees.

In December 2019, the first UST Program Needs and Fee Recommendation Report was provided to the CEQ for review. In April 2020, the CEQ approved the UST Advisory Council’s recommendation to increase the FY2021 tank fee to \$150 per active tank/year increasing annual tank fee revenue by \$378,395 for FY2021.

III. UST PROGRAM FUNDING SOURCES

The UST tank fees and an Environmental Protection Agency (EPA) Leaking Underground Storage Tank (LUST) Prevention Grant fund the following MDEQ UST Programs:

- Compliance and Enforcement Branch,
- Field Services Division,
- Outreach, Fee Management, and Registration Branch,
- Certified Contractor Program,
- UST Program Planning and Regulation Development,
- Trust Fund Reimbursement, and
- Database Management.

The EPA LUST Prevention Grant has ranged from a high of \$650,000 for Federal Fiscal Year (FFY) 2011 to a low of \$460,000 in FFY 2015. The LUST Prevention Grant has remained at \$460,000 since FFY 2015. MDEQ has been notified that the EPA LUST Prevention Grant for FFY 2020 will remain at \$460,000 and is available for spending through September 2021.

The LUST Prevention Grant is different from other EPA Grants, as the grant itself is not available for funding during the current FFY (i.e. the FFY 2019 Grant is not available for spending until October 2019 – the start of FFY 2020). In the last three (3) years of EPA budget reviews, the LUST Prevention Grant has been proposed for elimination if a budget reduction is necessary for EPA. However, since the elimination has not occurred to date, the UST Advisory Council will recommend a tank fee with the anticipation that MDEQ will receive the FFY 2021 EPA LUST Prevention Grant at \$460,000.

IV. FISCAL YEAR 2022 WORK PLANS

Fiscal Year 2022 work plans developed for the UST Program functional areas include the Compliance and Enforcement Branch; the Field Services Branch; the Outreach, Fee Management, and Registration Branch; the UST Certified Contractor Program; UST Planning; Trust Fund Reimbursement; and Database Management. Work in these functional areas is provided by the Groundwater Assessment and Remediation Division (GARD) and Field Services Division.

A. Compliance and Enforcement Branch

For FY2022, approximately 2980 underground storage tank facilities are expected to be in operation or temporarily out of service and subject to the Underground Storage Tank Act, requiring these facilities to be routinely inspected by MDEQ staff. The EPA LUST Prevention Grant Work Plan requires each operating facility to be inspected at least once every three (3) years. Therefore, approximately 994 facilities must be inspected in FY2022.

The UST facility compliance inspections are conducted by five (5) inspectors in the Field Services Division and one (1) GARD Division staff member. The inspections involve physical inspection of all components of the UST system including fuel dispensers, piping, tanks, and ancillary equipment, and review of the monthly, bi-monthly, yearly and every three-year monitoring records. Inspectors also provide oversight on new UST system installation, UST system repairs, general assistance, and outreach activities for the tank owners and operators, to assist them in monitoring their UST equipment.

The Compliance and Enforcement Branch in GARD is responsible for:

- reviewing all UST facility compliance reports and issuing Notices of Violations (NOV) for deficiencies discovered during the time of the inspection;
- establishing civil penalties based on the compliance inspections in accordance with the MDEQ UST Enforcement Management System (EMS);
- conducting Administrative Conferences for enforcement matters;
- performing follow-up inspections as needed to ensure the facility has re-gained compliance with UST regulations;
- issuing delivery prohibition (red tag program) notices which prohibit the delivery of fuel to UST systems that have inadequate UST system components, are delinquent in paying annual tank fees for more than 90 days, or the facility has remained out of compliance with UST Regulations for more than 60 days;
- conducting quarterly UST Compliance Workshops that either allow first time violators (tank owners that received their first NOV in the last three (3) years) to receive UST training in lieu of a monetary penalty, or provide Compliance Manager certification;
- oversight of UST certified contractors to ensure they are conducting UST system repairs, UST system installations, and UST system closures in accordance with UST regulations and industry standards.

Compliance and Enforcement Branch Activities

Activities	Completed in FY2020	Expected in FY 2022
Inspections of UST Facilities	1182	1000
Civil Penalties Collected	\$123,807	\$200,000
Notices of Violations*	393	450
Issuance of Delivery Prohibition	207	200
UST Compliance Workshop Attendees	100	200

**In lieu of creating a separate penalty order and NOV for each individual facility, both the penalties and NOVs are created based on the tank owner, as several tank owners own multiple facilities. Therefore, one order or one NOV can represent a number of UST facilities.*

New regulations for UST systems will become effective in October 1, 2021 (as stipulated in the Federal UST regulations). MDEQ anticipates these new regulations will result in an increase of violations and penalties consistent with previous years of new regulation implementation.

Workshop attendees should also increase as FY2020 saw the cancellation of the quarterly UST Compliance in March 2020 and June 2020 due to the Coronavirus.

B. Outreach, Fee Management, and Registration Branch

For FY2022, MDEQ anticipates approximately 7,975 USTs will be operating or temporarily out of service at 2,980 UST facilities which will be operated by approximately 1,450 tank owners. The Outreach, Fee Management, and Registration Branch has a wide variety of responsibilities for coordinating outreach to all the tank owners.

Registration is similar to MDEQ's Permitting Division. The tank owner is required to register any new UST system at a new facility and any new UST components such as a new tank or new piping at an existing facility. If any changes to the UST system occur as a result of a repair, modification, or upgrade, an updated registration form must be submitted and entered into the UST database to maintain an accurate description of all equipment at a UST Facility. The registration process also records any changes in tank ownerships. Close to ten percent (10%) of facility ownerships are transferred each year. This affects all branches in the UST Program. Finally, if a tank or piping is taken out of service, there is a closure process that must be followed in accordance with UST regulations. This branch also records all UST closures and reviews all associated sampling, to verify a release to the environment has not occurred from the UST system.

This branch also manages the annual tank fees associated with the UST facilities. Since several tank owners own multiple facilities, invoices are created for each tank owner, summarizing UST inventory at each facility. Annually, this branch coordinates the invoices with MDEQ Administrative Division and ABG20 to generate the invoices. The Fee Management group sends out all invoices, coordinates the payments with ABG20, and processes any credits,

overpayments, or misapplied payments. They also coordinate invoices throughout the year for tanks installed after the annual billing is mailed in May of each year. Once the invoice has been paid and the Fee Management group has determined that the UST facility is in good standing with the UST Program, a “Certificate of Operation” is sent to each tank owner for each facility. The “Certificate of Operation” expires each year on July 1, and must be provided and displayed at each operating UST facility for the facility to receive a fuel delivery. The fuel delivery company, fuel truck driver, and the tank owner can receive a monetary penalty for failure to post or verify a valid “Certificate of Operation”.

In conjunction with the Compliance and Enforcement Branch, the Outreach staff mail out monthly “Compliance Assistance Program” (CAP) reminders to participating tank owners. CAP is a voluntary program where tank owners can participate in receiving reminders of the annual and triennial testing requirements at their UST facilities. Once the tank owner has conducted the required annual testing (specific to the UST system at their facility which is tracked by the UST database), they submit the results to MDEQ. The Outreach staff is responsible for mailing out the monthly reminders and entering in the data once the passing test dates are received.

Outreach, Fee Management, and Registration Activities

Activities	Completed in FY2020	Expected in FY 2022
Registration of New UST Facilities	23	30
Notice of Intents for New UST systems	57	30
Change in Ownership Registration	172	160
Closure Reports	63	60
Certificates of Operation	2974	2980
Payment Processing (includes credits, advances, and late fee payments)	4729	4650
Compliance Assistance Program Letters	744	1000

Due to the Coronavirus outbreak, MDEQ experienced an increase of Notice of Intents for New UST systems due to the re-scheduling of the UST system installations and associated changes in selected UST Certified Contractors. Additionally, the Compliance Assistance Program letters could not be processed for a two-month period.

C. UST Certified Contractor Program

MDEQ regulates the persons who conduct work on UST systems through 11 Miss. Admin. Code Pt. 5, Ch. 3, “Underground Storage Tank Regulations for the Certification of Persons Who Install, Alter, Test, and Permanently Close Underground Storage Tanks.” To become a Mississippi UST Certified Contractor, an individual must attend MDEQ approved third party training courses, document experience working for a certified contractor, document certifications with specific testing procedures (manufacturer certification), possess and verify contractor’s insurance, and pass an MDEQ examination specific to the certification licensure. The license is valid for up to

two (2) years. Renewal of the licensure requires continuing education, updates to manufacturer licensing/testing, a renewal application to MDEQ, and updated contractor insurance information.

GARD staff in the Outreach Branch conduct the testing, verification of information, license issuance, renewal reminders, license revocations for failure to re-apply, and renewal licensing. The Compliance and Enforcement Branch GARD staff conduct on-site inspections of certified contractor work, conduct administrative conferences for any certified contractor issues discovered, and establish any corrective action or license revocation for failure to perform work in accordance with regulatory requirements.

The Certified Contractor Program also includes the licensure of Environmental Response Action Contractors (ERACs). An ERAC is a person or company who has been approved by the Commission to carry out any response actions for UST motor fuel releases that can be reimbursed through the Mississippi Groundwater Protection Trust Fund Program. GARD staff review new applications for ERACs, which require UST assessment and clean-up experience documentation, at least one million dollars (\$1,000,000) of professional liability insurance, a full time Mississippi Professional Engineer (PE) or Registered Professional Geologist (RPG) on staff, and verification that the ERAC will follow MDEQ UST Standard Operating Procedures. ERAC licenses expire every two (2) years, and require frequent updates when PE or RPG staff changes or professional liability insurance expires.

As of August 2012, all operating UST facilities are required to have a Compliance Manager who is responsible for the oversight of the UST system at each facility. The Compliance Manager is responsible for understanding the regulatory requirements for UST systems and should be able to contact appropriate persons when issues with the UST system occur. The Outreach Branch is responsible for maintaining the database of active Compliance Managers., This includes adding new Compliance Managers certified through our Compliance Workshop or through third party training, entering re-training events for Compliance Managers, and modifying Compliance Managers when personnel changes occur at UST facilities.

UST Certified Contractor Activities

Activities	Completed in FY2020	Expected in FY 2022
UST Certified Contractor New Licensures	58	60
UST Certified Contractor Renewals	218	220
UST Certified Contractor Corrective Actions	3	10
ERAC Applications	0	1
ERAC Renewals	35	35
New Compliance Managers	80	100
Existing Compliance Managers	2413	2600

D. UST Program Planning and Regulation Development

The MDEQ is responsible for the development and adoption of state regulations to incorporate the requirements of the Solid Waste Disposal Act and the UST provisions of the Energy Policy Act of 2005. This is accomplished through the state’s rulemaking process, working with the federal approval of the state program.

UST program planning efforts also include the annual tank fee evaluation with resource review; work plan developments and work completion reviews; division and program specific budgeting; annual reporting for the public, EPA, MDEQ, and Mississippi Legislature; and completion of processes to meet new regulatory requirements.

Anticipated FY2022 UST Program Planning and Regulation Development Activities

UST Regulatory Changes effective October 1, 2021	Modification of the UST Inspector Checklist to address items listed below: <ul style="list-style-type: none"> Finalization of the Annual Walkthrough Inspection Report Form Finalization of the Monthly Walkthrough Inspection Report Form Finalization of Containment Sump Testing Documentation
	Coordination with MDEQ Environmental Permits Division for disposal of containment sump testing waters
	Notification & Registration procedures for Emergency Power Generator tanks to retrofit for a form of release detection
Trust Fund Regulations	Modification to the Trust Fund Regulations to specify substantial compliance and include policy practices for reimbursement

E. Trust Fund Reimbursement Branch

MDEQ is responsible for the management of the Mississippi Groundwater Protection Trust Fund (Trust Fund). The Trust Fund reimburses registered tank owners/operators, who are in substantial compliance with the UST Regulations, for reasonable and necessary costs incurred to determine the extent of, and to clean up, contamination resulting from releases of motor fuels from USTs, where those releases pose a threat to the environment or a threat to the public health, safety or welfare. The Trust Fund serves as an alternative source of financial responsibility for owners/operators of USTs containing motor fuel, and it provides a fund from which to pay for third party damages caused by releases of motor fuels when a final judgment has been obtained according to UST statute.

GARD staff manages the Trust Fund by the pre-approval of all proposed activities and costs associated with those activities. Trust Fund Reimbursement staff review all scopes of work, once the MDEQ project manager has approved the technical merits of proposed activities. They establish the maximum allowable costs for the completion of each activity and issue the work

order letter to initiate the work. Once the work is complete and the MDEQ project manager has reviewed and verified the technical aspects of the work completed, the Trust Fund Reimbursement staff reviews the associated invoices to ensure they meet the pre-approved costs and limitations set in the initial work order.

Trust Fund Reimbursement Activities

Activities	Completed in FY2020	Expected in FY 2022
Trust Fund Eligible Sites	240	245
Work Orders Issued	256	280
Invoices Processed	590	700
Money Committed	\$ 7,890,469	\$ 8,500,000
Total Payments (in dollars)	\$ 7,848,493	\$ 8,500,000

In FY2020, the UST Technical Services Branch I and II lost their supervisors due to retirements. This loss coupled with the Coronavirus led to delays in hiring their replacements resulting in decreased number of work orders requested and associated invoices. As all vacant positions in the UST Technical Services Branches are filled, it is anticipated the Trust Fund reimbursement activities will increase in FY2022.

F. Database Management

The UST Program maintains an application referred to as the Mississippi Underground Storage Tank Environmental Records (MUSTER) system. The current MUSTER system provides support for the daily operations of the UST Program to track and manage facilities, owners, tanks, pipes, and companies and contacts, associated with the operation of the underground storage tank systems in Mississippi. This system generates all correspondence, inspection reports, and work orders for assessments and remediation. It also supports all accounting functions associated with tank fee management and reimbursement from the Trust Fund. In FY2020, MDEQ completed a new design document for a re-write of MUSTER application to meet current needs by adding new functionality and upgrading the platform for the application. The re-design should begin first quarter of calendar year 2021.

Planned FY2022 Database Management Activities

UST Regulatory Changes effective on October 1, 2021	Finalization of the UST Inspector Checklist to add: <ul style="list-style-type: none"> • Annual Walkthrough Inspection Report • Monthly Walkthrough Inspection Report • Three Year Containment Sump Testing • Release Detection for Emergency Power Generator tanks
	Modifications to Compliance and Enforcement penalty calculations and letters for new testing requirements
	Addition of data fields for new testing requirements

	Modification to Compliance Assistance Program data
Trust Fund Regulations	Modification to Trust Fund Reimbursement and Technical data fields in accordance with regulatory changes
Application Improvements	200 proposed modifications to the existing application to provide more advanced tracking, processing, and coordination of UST data.

V. FISCAL YEAR 2022 UST PROGRAM STAFFING NEEDS

Staffing Requirements

The following table summarizes the staffing requirements that provide the basis for personnel service expenditure estimates in the Fiscal Year 2022 budget projection:

Functions	Budget Code	Number FTEs
Compliance and Enforcement	1870	4.8
Outreach and Registration	1880	1.5
UST Planning	1880	0.8
Fee Administration	1880	0.7
Certified Contractor Program	1880	0.8
Trust Fund Reimbursement	1880	3.2
Field Inspections	5870	1.2
	6870	1.15
	7870	2.3
Database Management	DID	1.3

VI. FISCAL YEAR 2022 REQUESTED EXPENDITURES

MDEQ is projected to spend \$1,634,500 on the UST Program during FY2022. The MDEQ UST Program budget that is funded by the tank fee and EPA LUST Prevention Grant is shown below.

Fiscal Year 2022 Budget									
Budget Code	Salary	Fringe	Travel	Contract	Supplies	Equip	SL&G	Indirect	Total
1870	363,204	121,673	12,000	76,500	10,000	32,000,000		181,538	796,915
DID	0	0	1,000	90,000	1,000	5,000		0	97,000
1880	169,541	56,796	4,000	50,000	4,000	3,500		84,741	372,578
5870	75,887	25,422	5,000	10,000	4,800	27,000		48,234	196,342
6870	35,067	11,748	1,000	1,775	5,000	1,150		17,528	73,268
7870	33,241	11,136	4,000	4,000	4,000	2,100		12,514	70,991
Cont* Fund									27,405
TOTAL	676,940	226,775	27,000	232,275	28,800	70,750		342,555	1,634,500

**Cont Fund is the contingency funding MDEQ estimates for employee professional and/or educational benchmarks associated with salary increases*