

# State Fund Transition Issues

UST LUST Conference

March 14, 2005

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*Is There Life After State Funds?*

**It has always been the prerogative  
of children and half-wits to point  
out that the emperor has no  
clothes. But the half-wit remains a  
half-wit, and the emperor remains  
an emperor.**

**Neil Gaiman**



# Switching Mechanisms?

Issues to Consider

# Available FR Mechanisms

- State Funds
- Self Insurance
- Private Insurance
- Government Bonding Capability

# FR Considerations

- Will a newly discovered release be covered?
- How quickly will funding be available to address assessment and corrective action?
- How do you know for sure that a risk is covered before a loss occurs?
- Are health and environment protected?

# Private Insurance Is Available:

- Active Facilities:
  - Petroleum UST and AST Facilities
  - In Compliance With Federal Technical Requirements
- New Releases

# Insurance Is Not Available:

- Abandoned, unregistered facilities
- Facilities that are not in compliance with federal technical requirements
- Costs associated with existing, but not reported releases (past problems)
- Other non-quantified risks

# Issues Associated With Obtaining a New FR Mechanism:

- Existing Corrective Action
- Lapse of Coverage
- IBNR
- Reporting Period
- Eligibility Requirements
- Mechanism Exclusions

# Existing Corrective Action

- Has extent of old release been defined?
- Has corrective action level been established?
- Is corrective action progressing?
- Can new release be distinguished from the old release?

# Lapse of Coverage

- Release that occurs “between” old mechanism and new mechanism
- Issue: Is it new or is it old?
- If old, will old mechanism cover?
- Best solution is to test BEFORE transitioning to new mechanism—establish a baseline.

# IBNR

- Incurred But Not Reported
- Better definition of this issue may be Claims Arising From Prior Occurrences, or CAFPO
- Release is not discovered until new mechanism is in place
- Solution is to test before transition

# Reporting Period

- Time allowed to report a claim under old mechanism
- Insurance must allow 180 days
- State Funds have no limitations
- See Lapse and IBNR

# Eligibility Requirements

- Who qualifies to obtain coverage?
- State Funds have no limitations imposed by federal requirements
- Insurance has no limitations imposed by federal requirements, but insurance laws require that underwriting requirements be applied consistently

# Mechanism Exclusions

- Coverage limitations
- State Funds have no federal limitations
- Insurance must utilize CFR language
- Contract dictates insurance exclusions
- Caveat Emptor

Transition?

Life is pleasant. Death is peaceful. It's the transition that's troublesome.

Isaac Asimov

**The greatest enemy of truth is very often not the lie—deliberate, contrived, and dishonest, but the myth persistent, persuasive, and unrealistic. Belief in myths allows the comfort of opinion without the discomfort of thought.**

**John F. Kennedy**

# Transition Considerations

- Market/Needs Evaluation
- Address Lapse of Coverage issues
- Run-off of Existing Program
- Owner Education and Notification
- Enforcement of FR Requirements
- All politics are local—address your issues

# Market/Needs Evaluation

1. Define tank population
2. Determine environmental status of each facility—file review and testing
3. Determine underwriting compliance of each facility—inspections
4. Identify uninsurable facilities
5. Identify insurable facilities

FR Issues	State Fund	Other Mechanism
What is covered?		
Old releases		
New releases		
Tank system requirements		
Product limitations		
Use limitations		
Reporting requirements		
Operational requirements		
What is NOT covered?		
Who is covered?		
Who pays?		
What are annual costs per tank/site?		
What deductibles are available?		
Is every site eligible for coverage?		
What is the application process for coverage?		
What are claim filing requirements?		
How long does it take to process a claim?		
What is the appeal process for denied claims?		
What happens to the uninsured?		
How will FR Requirements be enforced?		
Does mechanism satisfy owner concerns?		
Does mechanism protect the environment?		
Does mechanism promote proper tank management?		
Does mechanism promote discovery of releases?		
Does mechanism promote immediate corrective action?		
Does mechanism satisfy federal FR requirements?		
Other considerations		

# Three FR Keys

- Coverage (book end liability)
- Financial adequacy (solvency)
- Stakeholder knowledge  
(communication)

The reason most major goals  
are not achieved is that we  
spend our time doing second  
things first.

Robert J. McKain

# Are Stakeholders ready?



- Determine their understanding
- Educate
- Communicate
- Repeat

# How to avoid transition issues

- Put owners and contractors on your board
- Pass costs on to taxpayers
- Allow “significant” compliance
- Share funds with other departments
- Put all tank systems into one program
- Allow sites to go un-inspected
- Express concern for “Ma and Pa” sites

## How to avoid transition issues

- Don't determine insurability of sites
- Don't establish a cutoff or sunset date
- Don't determine loss frequencies/severities
- Don't expedite cleanup
- Don't inspect sites
- Don't address loss control
- Don't “book end” liabilities

Changing FR Mechanisms is a  
political decision. Know the  
options. Address your concerns.  
Prepare for good results.

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