

ATTACHMENT D

BILL RITTER, JR
Governor

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DEPARTMENT OF LABOR AND EMPLOYMENT

DIVISION OF OIL AND PUBLIC SAFETY

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October 2, 2007

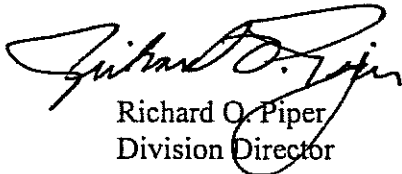
Senator Stephanie Takis
Chairman
Legislative Audit Committee
200 E. Colfax
Denver, CO 80203

Dear Senator Takis:

Attached is our status update of the legislative audit which was released on October 31, 2006 for the Petroleum Storage Tank Program of the Division of Oil and Public Safety. Our update includes Field Inspection, Remediation and State Fund which are all a part of the Petroleum Storage Tank Section. Since the release of the audit we believe we have made significant progress in addressing the auditor's issues and recommendations regarding the Petroleum Storage Tank Program.

We look forward to presenting our update regarding this program to the Legislative Audit Committee at your meeting on October 30th. In the meantime if you have any questions please don't hesitate to contact me at 303.318.8502.

Sincerely,



Richard O. Piper
Division Director

pc: Don Mares, Executive Director
Gary Estenson, Deputy Executive Director
Kara Miller Tupa, Legislative Liaison
Marilyn Hajicek, Deputy Division Director
Cher Haavind, Director of Government, Policy and Public Relations

**Progress Report on the Petroleum Storage Tank Program Performance Audit
Recommendations as of September 26, 2007 (One-Year Update)**

Recommendation No. 1:

The Division of Oil and Public Safety should identify and implement ways to increase owner/operator awareness of registration requirements to help ensure tanks are registered, pursuing statutory change as necessary. Options the Division should consider include:

- a. Requiring companies that sell storage tanks to notify purchasers of the Divisions registration requirements.
- b. Requiring tank owner/operators to present proof of registration to petroleum distributors before purchasing petroleum products.

Implementation Date: August 2007

Progress Update:

Partially Implemented/In Progress. The Division agreed with this recommendation but realized both proposed options would require statutory changes that would make our rules more stringent than EPA's. The Division identified an alternative method to increase owner awareness of registration requirements, through the provisions in the Federal Energy Policy Act of 2005. Through Senate Bill 07-031 enacted this past legislative session, the Division was successful in obtaining statutory changes, which amended the introductory portion to §8-20.5-202 (1), Colorado Revised Statutes, requiring the Division to promulgate and enforce rules related to the requirements in the Federal Energy Policy Act of 2005. One of the requirements in the Energy Policy Act includes provisions for prohibiting delivery to underground storage tanks that are ineligible to receive product (unregistered or not in compliance with regulations). The Division will use this alternative method together with continued outreach efforts to increase owner/operator awareness of registration requirements.

The Division has begun working with a stakeholder group comprised of approximately 20 individuals from various sectors of the petroleum industry, to develop regulations related to all the provisions in the Energy Policy Act of 2005. The Division anticipates that these regulations will be available for public comment in March 2008, and should be effective and fully implemented by May 2008.

Recommendation No. 2:

The Division of Oil and Public Safety should identify options for streamlining and improving the timeliness of the oil inspection process within existing resources. Options the Division should consider include:

- a. Requiring owner/operators to hire a qualified company to perform meter measurements and calibrations annually and report results to the Division. Statutory changes should be pursued as necessary.
- b. Implementing a more robust risk-based approach to determine site inspection frequency, considering factors such as site location, past history of compliance, and the risk of a leak reaching groundwater.

Implementation Date: N/A

Progress Update:

Implemented. During FY 06 we inspected 63.5% of the total number of facilities which is very close to our stated goal of 66.6%, inspecting all registered facilities on an 18 month cycle. In

addition the Division had developed and began implementing streamlining measures in 2005 to allow additional time for our field inspectors to conduct inspections. These streamlining measures included conducting the review of compliance monitoring records (release detection and release prevention) in the office rather than in the field, allowing for consistency in review as well as time saving for the inspectors in the field. Also starting in 2005, the Division developed and provided each inspector with detailed station lists with performance goals and graphical tools that allow the inspectors to see how well they are performing with respect to meeting their year to date and annual inspection goals anytime during the year. In addition the Division revised its field inspection forms to ensure consistent data collection. These forms were also easier for inspectors to use and resulted in some time savings and efficiencies. These simple streamlining measures have enabled the Division to ensure that inspection goals were achieved, and continue to be achieved as evidenced below.

Based on the 4,700 registered facilities noted in the audit report, the Division needs to conduct 3,102 inspections per year to meet our stated goal of inspecting facilities on an 18 month cycle. This means completing of 241 inspections per month or 60 inspections per week. In FY07, the Division conducted 3,089 inspections (99.6% of our annual goal), while over the last twelve months, from October 2006 through September 19, 2007, the Division conducted 3,120 inspections (100.6% of our annual goal). This indicates that we continue to remain on target to conduct all inspections on an 18-month cycle.

Recommendation No. 3:

The Division of Oil and Public Safety should improve owner/operator compliance with state laws and regulations by ensuring that staff comply with Division policies and follow up on site violations and inadequate or late release detection system reporting. Follow up actions should be documented in the Division's files. In addition, the Division should assess penalties against owner operators who repeatedly fail to correct violations in a timely manner, such as those who consistently fail to comply with storage tank regulations and release detection system records requests.

Implementation Date: December 2007

Progress Update:

Implemented. The Division agreed with the recommendation to strengthen its enforcement policies to help ensure owner/operator compliance with state laws and regulations. Since October 2006 the Division has begun reevaluating resource utilization and procedures on enforcement to follow up on site violations and inadequate or late release detection system reporting. The Division has developed and utilizes standard enforcement template letters, and has begun implementing new enforcement procedures that include initial phone calls to notify owner/operators of the areas of non-compliance with regulations and the resulting enforcement actions, as well as to confirm fax and mailing address information so that the enforcement letters reach the intended recipients. Follow up actions are documented in the Division's files. Between January and May 2007 the Division has implemented these new enforcement procedures at 50 facilities. In response to an initial enforcement phone call, 15 facilities immediately provided documentation requested to demonstrate compliance with regulations. Enforcement letters have been sent to 33 facilities, and the Division has obtained 93% compliance in response to these enforcement letters.

Since May 2007 the Division has also reorganized staff duties, and created an enforcement coordinator position to handle enforcement for all sections within the Division. The Division has

also revised its enforcement process and has further developed standard enforcement template letters. Under our current process program staff sends out a Final Request letter if an owner/operator fails to respond to the Divisions Request for Records issued at the time of the inspection. If the owner/operator does not respond to the Final Request within 30 days, the enforcement coordinator then sends out an Enforcement Notice giving the owner/operator an additional 30 days to respond and come into compliance. If the owner/operator fails to respond to the enforcement Notice the program manager sends out a Settlement Agreement, which includes monetary penalties, as well as certain tank and line testing requirements, with potential shutdown of operations unless compliance can be demonstrated.

Since August 2007, the Division has sent out 405 Final Request letters for inspections conducted between January and May of 2007. Later this month the Division will be sending Enforcement Notices to those that have not adequately responded to the Final Request letter they recently received, and will follow-up with a Settlement Agreement whenever necessary. The Division intends to fully implement this recommendation by December 2007.

Recommendation No. 4

The Division of Oil and Public Safety should hold owner-operators accountable for meeting deadlines for submitting site characterization reports and corrective action plans by:

- a. Evaluating options for revision the current 90- and 150-day deadlines, including establishing deadlines on the basis of project risks, setting intermediate deadlines for owner/operators to submit project reports, or requiring that owner/operators propose deadlines, to be approved by the Division, based on the conditions at their site. The Division should then hold owner/operators accountable for meeting these deadlines.
- b. Reviewing and revising its policy related to extensions and imposing limits on the number and length of extensions that an owner/operator can receive and requiring the owner/operator to provide justification and documentation when requesting an extension. The Division should review the justification and documentation to ensure they are appropriate.
- c. Consistently taking enforcement actions, such as assessing penalties, against owner/operators who continually fail to comply with Division requirements and are not responsive to the Division's requests.

Implementation Date: January 2008

Progress Update

Partially Implemented/In Progress.

- a. The Division has formed an internal group to evaluate timeframes for report submittals and methods for holding owner-operators accountable for meeting the deadlines. The group is currently reviewing queries to analyze time-frame trends based on numerous criteria including, threats to receptors, complexity of site conditions, consultants, owner/operators, etc. Following the analysis of the data, decisions will be made concerning changes to timeframes as well as the need for site specific deadlines. The universe of data in the study includes 275 Site Characterization Reports and 54 Corrective Action Plans that were received for confirmed releases that occurred on or after 7/1/04. For the Site Characterization Reports, 23% percent were submitted within the deadline and 25% were received more than 9 months following the deadline. For the Corrective Action Plans, 43% were received within the deadline and six percent were received more than six months following the deadline. Preliminary results of the study indicate there will be a range of deadlines that will incorporate site complexity and threats to receptors. It is also

anticipated that for the more complex sites, owner/operators will be required to propose site specific deadlines. These changes will require rule promulgation and the recommendation is on schedule for January, 2008.

- b. The Division requires all extension requests to be provided in writing and to include justification for the request and provide preliminary analytical data from samples previously collected. All request letters and justification are maintained in the project files and summarized in COSTIS entries. For sites with access issues, letters granting extensions identify that the owner/operator MUST coordinate with Division within 30 days if they are having difficulty obtaining access. Unreasonable requests for extensions are denied or extension times are reduced to ensure progress is being made toward either fully defining the extent of contamination or implementing an approved remediation method. Following the implementation of a. above, the Division will significantly reduce the number of extensions granted.
- c. The Division takes enforcement actions against owner/operators who fail to comply with Division requirements. A final request letter is sent to the owner/operator when a required report is not received in a timely manner, as outlined in the Division's enforcement policy. The Division has sent 196 enforcement letters and/or settlement agreements concerning site characterization report and corrective action plan issues. Percentage reductions have been imposed by the Petroleum Storage Tank Committee for approximately 100 events for non-compliance with site characterization report and corrective action plan submittal requirements.

Recommendation No. 5

The Division of Oil and Public Safety should ensure that it receives sufficient information to adequately assess the progress of remediation by:

- a. Continuing its development and implementation of standard reporting requirements to help track when mechanical systems are down and whether systems are operating in accordance with corrective action plans. The Division should follow up with owner/operators as necessary.
- b. Applying sanctions when owner/operators fail to keep their systems operational, such as using penalties or percent reductions in State Fund assistance.
- c. Consider requiring owner/operators to install an independent data source, such as a data logger, on all major components of a remediation system and use this information to prepare quarterly monitoring reports and maintain the records for Division review if problems arise.

Implementation Date: June 2007

Progress Update

Implemented.

- a. The Monitoring and Remediation Report (MRR) format has been posted to the Division website and is currently being modified to address stakeholder comments to improve the ease of use for the standard format. The Division has also redesigned its Remediation System Inspection Program, inclusive of field forms, to better capture details concerning the operation and maintenance of remediation systems during site inspections. The Remediation Section Technical Reviewers are now required to conduct twelve site visits per year (72 total visits) for remediation system inspections and possibly for verification groundwater sampling (see Recommendation 6). These site visits are now being scheduled around operations and maintenance events as opposed to during sampling activities to ensure personnel with the appropriate knowledge of the remediation system are present

during inspections. The Technical Reviewer completes the newly developed site visit form, which is then tracked by the site visit coordinator, and scheduled for follow-up by the Technical Reviewer.

- b. As remediation systems are identified that are not meeting their operational requirements, a final CAP implementation letter will be sent by the Technical Reviewer to the Responsible Party. If the CAP implementation deficiencies are not met within the required time-frame, an enforcement letter will be sent by the Enforcement Coordinator. The third step is a settlement letter and fine from the Remediation Section Manager. The final step is a notice of violation with additional fines and penalties from the Division Director.
- c. The Division now requires an operational meter for all mechanical remediation systems installed as a component of CAP implementation. Instructions of this requirement have been posted to the OPS' website and results from data loggers will be captured by the MRR which will be used to ensure compliance with the approved CAP. The existence of this meter will also be verified during Division staff site visits. When data logger results indicate the system is not running in compliance with the approved CAP, enforcement action will be taken (see b. above). Since April 1, 2006, Division staff has conducted 42 site visits to specifically evaluate the installation (11 sites) or operation (30 sites). During these visits, staff determined that only 70% of the systems were operational at the time of the visit. Of the 30% of systems that were not operational, reasons for downtime included routine maintenance or equipment replacement activities and none were determined to be out of compliance for CAP implementation.

Recommendation No. 6

The Division of Oil and Public Safety should strengthen the Remedial System Inspection Program by reevaluating the purpose of the split sampling process to maximize the value of the process and to use it most effectively. If the decision is made to use split samples to monitor the quality of owner/operator test results, the Division should improve its guidance on how to collect split samples and establish standards for analyzing samples. This includes ensuring that owner/operators use the same method as the Division to analyze samples and establishing criteria that can be used when comparing lab results to identify those instances when differences in the results warrant additional evaluation of the data and potential follow-up with the owner/operator and consultant.

Implementation Date: October 2008

Progress Update

Implemented. The Division is not using a split sample process. The Division is using sampling to provide a snapshot or verification of site conditions. These samples are used to accumulate additional data to verify mass removal and remediation performance and also to verify whether No Further Action requests are warranted. Division staff have conducted 77 site visits since April 1, 2006 to evaluate system installation (11 sites), to evaluate system performance (30 sites), or to review site logistics or other issues (36 sites). During these visits verification groundwater or soil vapor samples were collected at 8 sites. Each Remediation Section staff member is now required to conduct 12 site visits per year (72 total visits for Section), and it is anticipated that verification samples will be collected during at least 10% of these visits.

Recommendation No. 7:

The Petroleum Storage Tank Committee should evaluate a system for maintaining written documentation of its rationale for final reduction decisions, including how extenuating circumstances impact the Committee's decision. The Committee should review this information to

periodically evaluate its practices for determining the amount of reductions to impose for noncompliance issues and revise its policies as necessary.

Implementation Date: March 2008

Progress Update

Partially Implemented/In Progress. Prior to the release of the Audit Report, at the Petroleum Storage Tank Committee (PSTC) meeting of October 20, 2006 the PSTC entered into Executive Session to discuss the results and activities going forward with regard to this recommendation.

Subsequently, Division staff has analyzed the data regarding percent reductions assembled by the Auditor as well as other recent PSTC decisions. This information and analysis was presented to the PSTC at the meeting of September 21, 2007.

The result of this presentation and subsequent discussion was a decision by the PSTC to have Division staff maintain an excel spreadsheet documenting PSTC decisions. The spreadsheet will be available to the PSTC members before and during PSTC meetings. Items to be included on the spreadsheet are the category of the applicant (big oil, small oil, other corporations, individuals, and government), the maximum percent reduction identified for each compliance area and total maximum percent reduction identified, the maximum percent reduction imposed for each compliance area and the total percent reduction imposed by the PSTC, and a brief description of the rationale for the decision, including any extenuating circumstances. The spreadsheet will be a work in progress as Division staff will look for common reasons for decisions and add these to the spreadsheet as a check-off column whenever possible. This information will be compiled beginning with PSTC meeting of September 21, 2007.

Recommendation No. 8

The Division of Oil and Public Safety should comply with Environmental Protection Agency cost recovery requirements and ensure all cost recoveries are based on accurate expenditure data. The Division should:

- a. Request reimbursement for project expenditures when the responsible owner/operator has been identified and take enforcement actions as necessary.
- b. Establish criteria or use the EPA's software to evaluate owner/operators' ability to repay LUST Trust Fund expenditures for remediating their sites, pursuing cost recovery when cost-effective.
- c. Perform periodic reconciliations between expenditure information in COSTIS and COFRS and resolving discrepancies or alternatively, relying on expenditures recorded in COFRS. Cost recovery amounts should be based on reconciled project expenditure data or data contained in COFRS.
- d. Maintain supporting documentation, such as invoices, for expenditures recovered from the State Fund.

Implementation Date: November 2007

Progress Update

Implemented.

- a. The Division has cost recovered about \$6 million from the Petroleum Storage Tank Fund for sites that are eligible and considers it a success story. These funds have been used at high priority sites where owner/operators are unknown, unwilling, or unable to perform their own site assessment and cleanup activities and represent the majority of the funds

used at 62 LUST Trust sites. The Division believes it has cost recovered more funds than any other state. The Division will continue to request reimbursement for project expenditures when the owner/operator has been identified. The Division will forward to State Collections those cases where the owner/operator is found to be required to pay as identified in b. below.

- b. All owner/operators for active LUST sites have submitted paperwork necessary to evaluate (using Indypay) their ability to repay LUST Trust Fund expenditures. Only one site did not meet the requirements and has subsequently been removed from consideration as a LUST site. No work had been performed under LUST at the site prior to the evaluation; therefore, no cost recovery is required. The owner/operator has taken over investigation and remediation activities at the site.
- c & d. The Division agrees and has implemented the following: Cost recovery dollar amounts are now based on financial data tracked in COFRS. COSTIS is no longer being used to track LUST Trust expenditures; therefore no reconciliations are being performed. To ensure that the accurate dollar amount is recovered for all future cost recovery efforts the Division is using COFRS to track LUST Trust expenditures. Supporting documentation, such as invoices, for expenditures recovered will continue to be maintained in the Finance Office. The Division is no longer maintaining copies of invoices in the Division's record center.

Recommendation No. 9:

The Division of Oil and Public Safety should work with the Petroleum Storage Tank committee to streamline and improve the efficiency of the budget approval and reimbursement review process by:

- a. Revising Committee policies to allow Division staff to review expenditures only to ensure they are included in the budget and supported by invoices.
- b. Establishing more comprehensive cost standards to be used in the budget development process. Options could include establishing cost guidelines for additional task and labor codes or establishing guidelines by remediation activity.

Implementation Date: July 2008

Progress Update

- a. Implemented. In October 2006, OPS internal procedures regarding eRAP review were modified and eRAP Team staff members were instructed that if a cost item is included on the EFS but its unit rate is above the reasonable cost guidelines (RCG), that cost should in most cases be approved for reimbursement. An exception would be for large dollar amount items when we always check with the Remediation Section staff to verify the cost is legitimate and reasonable.

- b. Partially Implemented/In Progress. The Division has developed cost guidelines for 15 additional task codes as identified below.

TLC		EFSAvg	RAPAvg	Avg
6.28	BTEX (soil vapor)	\$128.43	\$122.41	\$125.42
6.29	VOA (indoor vapor)	\$195.19	\$169.23	\$182.21
6.30	Semi-VOA (16 Priority PAH's)	\$232.06	\$173.65	\$202.85
6.32	Field test kits	\$8.19	\$6.84	\$7.52
8.11	drafting/CADD subcontractor	\$65.19	\$48.29	\$56.74
12.2	water level indicator	\$24.39	\$25.67	\$25.03
12.3	interface probe	\$48.09	\$48.00	\$48.05
12.4	organic vapor meter	\$80.69	\$77.05	\$78.87
12.5	Explosimeter	\$38.58	\$42.03	\$40.30
12.6	dissolved oxygen meter	\$52.12	\$49.06	\$50.59
12.7	pH and conductivity meter	\$36.12	\$34.88	\$35.50
12.8	data logger	\$173.64	\$169.70	\$171.67
12.9	air velocity meter	\$38.96	\$40.72	\$39.84
12.10	air sampling pump	\$33.03	\$33.92	\$33.47
14.4	Drums	\$55.00	\$0	\$55.00

BILL RITTER, JR
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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Oil and Public Safety- Field Inspection Program

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ATTACHMENT C

MEMORANDUM

TO: Legislative Audit Committee 2007 Members, Office of the State Auditor Staff

FROM: Division of Oil and Public Safety

DATE: June 8, 2007

RE: Status Update - Division of Oil and Public Safety Performance Audit
Recommendations - Petroleum Storage Tank Program

This six month status update is being provided in response to the request from Senator Stephanie Takis, Vice-Chair of the Legislative Audit Committee in October 2006.

Recommendation No. 2:

The Division of Oil and Public Safety should identify options for streamlining and improving the timeliness of the oil inspection process within existing resources. Options the Division should consider include:

- a. Requiring owner/operators to hire a qualified company to perform meter measurements and calibrations annually and report results to the Division. Statutory changes should be pursued as necessary.
- b. Implementing a more robust risk-based approach to determine site inspection frequency, considering factors such as site location, past history of compliance, and the risk of a leak reaching groundwater.

Status Update: Implemented

As identified in the audit, the Division had inspected 63.5% of the total number of facilities during FY 06 which was within 95% our stated goal of 66.6%, inspecting all registered facilities on an 18 month cycle. In addition the Division had developed and began implementing streamlining measures in 2005 to allow additional time for our field inspectors to conduct inspections. These streamlining measures included conducting the review of compliance monitoring records (release detection and release prevention) in the office rather than in the field, allowing for consistency in review as well as time saving for the inspectors in the field. Also starting in 2005, the Division developed and provided each inspector with detailed station lists with performance goals and graphical tools that allow the inspectors to see how well they are performing with respect to meeting their year to date and annual inspection goals anytime during the year. In addition the Division revised its field inspection forms to ensure consistent data collection. These forms were also easier for inspectors to use and resulted in some time savings and efficiencies. These simple streamlining measures have enabled the Division to ensure that inspection goals are achieved, as evidenced below.

Based on the 4,700 registered facilities noted in the audit report, the Division needs to conduct 3,102 inspections per year to meet our stated goal of inspecting facilities on an 18 month cycle. This means completing of 241 inspections per month or 60 inspections per week. Year to date in FY 07, as of May 11, 2007 (the end of week 45), the division has conducted 2,704 inspections (99.7% of our YTD goal of 2711 inspections). This indicates that we continue to remain on target to conduct all inspections on an 18-month cycle.

Recommendation No. 3:

The Division of Oil and Public Safety should improve owner/operator compliance with state laws and regulations by ensuring that staff comply with Division policies and follow up on site violations and inadequate or late release detection system reporting. Follow up actions should be documented in the Division's files. In addition, the Division should assess penalties against owner operators who repeatedly fail to correct violations in a timely manner, such as those who consistently fail to comply with storage tank regulations and release detection system records requests.

Status Update: Implemented

The Division agreed with the recommendation to strengthen its enforcement policies to help ensure owner/operator compliance with state laws and regulations. Since October 2006 the Division has begun reevaluating resource utilization and procedures on enforcement to follow up on site violations and inadequate or late release detection system reporting. The Division has developed and utilizes standard enforcement template letters, and has begun implementing new enforcement procedures that include initial phone calls to notify owner/operators of the areas of non-compliance with regulations and the resulting enforcement actions, as well as to confirm fax and mailing address information so that the enforcement letters reach the intended recipients. Follow up actions are documented in the Division's files.

Since January 2007 the Division has implemented its new enforcement procedures at 50 facilities. In response to an initial enforcement phone call, 15 facilities immediately provided documentation requested to demonstrate compliance with regulations. Enforcement letters have been sent to 33 facilities, and the Division has obtained 93% compliance in response to these enforcement letters. The Division has also begun reorganizing staff duties, to create an enforcement co-coordinator position to handle the enforcement for all sections within the Division. The Division intends to fully implement this recommendation by December 2007.