



## ANNUAL UPDATE FOR CALENDAR YEAR 2023

SB 181

COMPLIANCE WITH WATER QUALITY STANDARDS AND CLASSIFICATION

January 31, 2024

This update to the Water Quality Control Commission summarizes the activities of the Division of Oil and Public Safety’s Storage Tank Program related to SB 181 for calendar year 2023.

### *Inspection Activities for Calendar Year 2023*

Inspections Completed.....	2,474
Number of Notices of Violations Issued.....	846
Number of Notices of Violations Resolved.....	661
Number of Enforcement Orders Issued.....	19
Number of Enforcement Orders Resolved.....	10
Number of Tanks with Delivery Prohibition.....	51

### *Remediation Activities for Calendar Year 2023*

Number of Open Confirmed Releases .....	549
Number of 2023 Confirmed Releases .....	176
Number of Cleanups Initiated .....	206
Number of Cleanups Completed .....	211

### *State Fund Information for Calendar Year 2023*

Number of Reimbursement Applications Reviewed by the PST Committee.....	75
Number of Supplemental Reimbursement Applications Approved by Staff.....	756
Reimbursement by the PST Committee (including State Lead/LUST Trust).....	\$21,749,667

### *Summary of Statistics*

In 2023, the Division of Oil and Public Safety (OPS) performed 2,474 inspections of petroleum storage tank systems, fostered a high 93% compliance rate among tank systems, closed nearly 50 more petroleum releases than were reported, reduced the Environmental Response Surcharge twice while reimbursing over \$21 million, and maintained leadership among national associations and conferences.

The number of open releases at the beginning of January 2023 was 588 and by December 31, 2023, OPS had closed 211 open releases. The number of open petroleum release events remained below six hundred with a total of 549 open releases in January 2024. This was a decrease from 2023.

OPS continues to lead EPA Region 8 with 211 completed cleanups in calendar year 2023. There are several factors including release prevention and detection efforts, identifying



releases earlier, developing better conceptual site models (CSMs), and implementing effective corrective action plans (CAPs).

While the implementation of the Tier III and Tier IV No Further Actions (NFAs) were successful in closing low risk legacy sites, the majority of NFAs granted during 2023 were Tier I and Tier II (202 combined), which further indicates the success of release prevention and detection.

## **OPS Program Achievements and Improvements**

Listed below are achievements and improvements made by OPS to more effectively protect groundwater from contamination associated with releases from petroleum storage tank systems and to protect the solvency of the Petroleum Storage Tank Fund.

### Risk-Based Inspections

In an effort to prevent petroleum releases, OPS began varying the frequency of facility inspections and the facility owner/operator's level of involvement in 2017. The inspection frequency is determined by OPS using facility compliance history, equipment material and age, previous releases, and other criteria to identify higher-risk facilities versus lower-risk facilities. Higher-risk facilities are inspected annually and OPS announces these inspections ahead of time to encourage owner/operator involvement. The OPS Inspector performs a compliance inspection as usual, conducts an onsite compliance records review, and uses the opportunity to educate the owner/operator on compliance tips and discuss the owner/operator's monthly and annual inspections.

OPS performed 2,474 inspections of petroleum storage tank systems in 2023.

### Storage Tank Operational Compliance

The Technical Compliance Rate (TCR) for underground storage tank systems in Colorado remains quite high at 93.1% at the end of the calendar year 2023. A top priority for OPS is to prevent petroleum releases, and maintaining a high compliance rate is the most direct way for our regulated tank owners to help us achieve that goal.

### Recognized Environmental Professional (REP) Program Changes

OPS has been gathering feedback from both the REPs and OPS Technical Reviewers as to the successes and the challenges with the current REP Program. Both groups found the main challenge to be continued accountability with this program. The REP Program was set up to better align decision-making responsibility between OPS, environmental consultants and responsible parties by identifying environmental consultants who can demonstrate decision-making experience for the assessment, risk characterization and remediation of petroleum releases to the environment. While OPS believes that this has occurred to some extent, one piece that is missing is accountability for REPs that are not performing at a level that remains in line with the expectation of the REP Program.

Over the next year the OPS Remediation group will be carefully and thoughtfully putting together a new program that will combine aspects of the REP and the old Listed Company programs. We do not yet have this program finalized; we want to be extremely thoughtful and

Careful as to the criteria, expectations, and accountability that will direct this new program. We expect this new program to be fully implemented at the beginning of 2025 with information coming out over the next several months.

#### Update to the Soil Risk Based Screening Levels (RBSLs)

OPS has not updated the soil RBSLs since 1999. Since then, the U.S. Environmental Protection Agency (EPA) has updated toxicity and exposure criteria. So that the soil RBSLs will be in line with current toxicity and exposure criteria, OPS contracted with TRC Companies' risk assessors to conduct the soil RBSL evaluation for surficial and sub-surface exposure pathways. As a result of this work tetraethyl lead (TEL), 1,2-dichloroethane (1,2-DCA), and ethylene dibromide (EDB) have been introduced as contaminants of concern in soil. OPS anticipates the Regulations will be updated by October 1, 2024, incorporating the updated soil RBSLs.

#### Petroleum Storage Tank Committee Policy 29

All UST systems installed in Colorado after August 2008 are secondarily contained and inherently pose a lower risk of a release to the environment. Releases from these newer secondarily contained tank systems are usually detected earlier, are small in size, and consequently are easier and less expensive to remediate. In an effort to reduce the environmental risk posed by an aging tank population, the Committee authorized Policy 29 to use monies in the Petroleum Storage Tank Fund to provide reimbursement of UST removal costs. This enabled tank owners or operators to proactively make decisions to replace or close aging UST systems, with replacement systems being upgraded to include secondary containment. Removal costs are reimbursed at \$1 per gallon of UST volume removed, up to \$30,000 per facility.

#### Tank Removal Incentive

The Colorado Revised Statutes [§ 8-20.5-103 (3.5)] authorize monies in the Petroleum Storage Tank Fund (Fund) to be used as incentives to underground or aboveground storage tank owners and operators for significant operational compliance or to upgrade existing tank systems. In addition to Policy 29, the Committee offers an incentive to reduce the financial burden for an owner/operator who discovers confirmed releases while removing and permanently closing their entire tank system. The Committee finds that maximum environmental benefit is achieved when tank systems are removed altogether and not replaced, ending fuel-dispensing activities at the property. Therefore, an owner/operator's maximum operational compliance is achieved through the complete discontinuation of fuel-dispensing activities. This incentive is in the form of a waiver of the \$10,000 deductible when an owner/operator seeks reimbursement from the Fund for cleanup of a confirmed release that is determined to be eligible by the Committee. This tank removal incentive has some limitations and requirements including:

- A maximum of 10 facilities per owner/operator, with only one incentive allowed per facility.
- The facility must be in significant operational compliance with release detection and release reporting as identified by OPS and evaluated by the Committee.
- The incentive only applies to systems removed and not replaced.

### Outcome of Policy 29 and Incentive

During 2023, the Committee approved the reimbursement of \$455K for the removal of 24 aging USTs in accordance with Policy 29. In addition, we waived \$50k in deductible amounts due to contamination found during the removal of aged tanks, making for a combined total of \$505K.

### Fund Solvency

OPS reduced the Environmental Response Surcharge twice in 2023 while reimbursing over \$21 million for petroleum cleanup. In 2023, the Petroleum Storage Tank Fund received a total of 799 applications for reimbursement and paid out over \$21 million for petroleum cleanup costs.