

MEMORANDUM OF AGREEMENT

Between the Colorado Department of Labor and Employment, Division of Oil and Public Safety ("OPS") and the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division ("HMWMD"), (collectively, the "Parties")

Definitions:

For the purposes of this Memorandum of Agreement ("MOA"), the following terms shall be defined as provided here.

"Abandoned tank" means an underground petroleum storage tank that the current tank owner or operator or current property owner did not install, has never operated or leased to another for operation, and had no reason to know was present on the site at the time of site acquisition.

"Hazardous substance UST system" is an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substance and petroleum, and which is not a petroleum UST system.

"Orphan tank" means an underground storage tank which is:

- (a) Owned or operated by an unidentified owner as defined section 8-20.5-101, C.R.S. (2014); or
- (b) No longer in use and was not closed in accordance with the procedures required by this article and the property has changed ownership prior to December 22, 1988, and such property is no longer used to dispense fuels.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of regulated substances from an underground storage tank into groundwater, surface water, or subsurface soils.

Applicable Statutory Authorities

OPS:

§§ 8-20.5.101 to 8-20.5-304, C.R.S.

HMWMD:

§§ 30-20-100.5 to 30-20-123, C.R.S. and

§§ 25-15-101 to 25-15-515, C.R.S. and

§§ 25-16-101 to 25-16-311, C.R.S.

Purpose

- (1) The Parties agree that coordination of their respective corrective action and clean-up efforts will benefit the public and the environment, minimize exposures that carry human health risks, and assure future usefulness of the site.
- (2) This MOA is intended to clarify an area of common concern and interest through interagency cooperation where the Parties can streamline their regulatory and corrective action workload by relying on efforts of the other.
- (3) This MOA clarifies the controlling oversight responsibilities thereby easing "regulatory burden" for industry while improving compliance with state statute and regulations.
- (4) This agreement updates a previous MOA between the former Oil Inspection Section of the Colorado Department of Labor and Employment and HMWMD.

Scope

This MOA is intended to establish a defined and cooperative relationship between OPS and HMWMD in the area of releases from hazardous substance underground storage tank systems.

This MOA does not address programmatic responsibilities for contamination that result from releases other than those from an underground storage tank system nor from unknown or undefined sources. It does not address permitted hazardous waste tanks. It does not provide, add or transfer authority to either agency beyond the authority provided in statute.

Agreements

- (1) OPS shall be responsible for the regulatory and programmatic oversight (defined in section 8-20.5-202, C.R.S.) of petroleum underground storage tank systems, which includes but is not limited to design, installation, permitting, operation, leak detection, etc.
- (2) OPS shall notify the HMWMD Hazardous Waste Program Manager by telephone concerning any release from a hazardous substance UST system within one working day after such release report is received and shall follow up the initial notice with a written notice to that same person within seven working days.
- (3) Corrective actions implemented to clean up any hazardous substance

contaminant other than petroleum released from a hazardous substance UST system shall be the responsibility of the HMWMD.

(4) When a release is detected that has more than one source and the resulting plume of contamination contains both petroleum and hazardous substance contaminants comingled, HMWMD shall be the lead Party and oversee the clean-up until the non-petroleum component has been adequately dealt with; and then the remainder of the plume resulting from a petroleum release, if any, shall be remediated under the oversight of the OPS Remediation Unit.

(5) When more than one release has occurred and the resulting contaminant plumes are distinguishable to the degree that they can be managed and remediated separately (as one or more petroleum and one or more hazardous substance plume, portions of which may have comingled), the Parties shall begin remediation as soon as appropriate and practicable under their respective clean-up processes and shall assure interagency coordination wherever necessary to make maximum use of their efforts and those of the site owner/operators.

(6) If a release occurs at an underground petroleum storage tank site for which the owner is exempt from OPS regulation pursuant to section 8-20.5-101(17)(b) CRS, or at abandoned or orphaned tank sites, OPS has the authority to oversee the assessment and cleanup of petroleum contamination. As long as the clean-up meets OPS's closure criteria found at Rule 2-4, 7 Code Colo. Regs. 1101-14, OPS will issue a "No Further Action Letter," and neither OPS nor HMWMD will require further action. If the owner of the abandoned, orphaned or exempt underground petroleum storage tank does not wish to comply with OPS's criteria, OPS will contact HMWMD, and if neither of the Parties has cleanup authority, OPS may perform the necessary actions using Federal Leaking Underground Storage Tank Funds as provided in the Solid Waste Protection Act, 42 U.S.C. 6901, § 9003(h).

(7) The Parties agree to review this MOA every other year and update or correct it as necessary.

(8) This revised MOA becomes effective when signed by the Parties.

Approvals

**Colorado Department of Labor and Employment
Division of Oil and Public Safety**

Approved by:



Date: 1/26/15

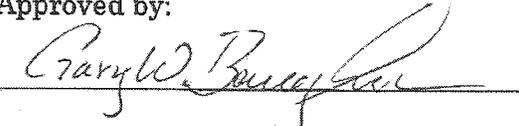
Printed name and title:

MAHESH ALBUQUERQUE

DIRECTOR

**Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division**

Approved by:



Date: 2/6/15

Printed name and title:

Director Gary W. Baughman

Director, HMWMD