

**MINUTES OF THE
STORAGE TANK ADVISORY COMMITTEE MEETING
JUNE 7, 2016**

The Storage Tank Advisory Committee (STAC) met on June 7, 2016, at the Rachel Carson State Office Building, 400 Market Street, Room 105, Harrisburg. Nine (9) voting members were present, which constituted a quorum.

Voting members in attendance were:

Local Government:

Lisa Schaefer, County Commissioners Association of Pennsylvania
Holly Fishel, Pennsylvania State Association of Township Supervisors

Regulated Community:

Judy Brackin, Associated Petroleum Industries of Pennsylvania (STAC Vice-Chairperson)
Nancy Maricondi, Petroleum Retailers and Auto Repair Association, Inc.

Public:

Robert May, Synergy Environmental Inc.
Timothy Bytner, Babst Calland
David Gallogly, Pennsylvania Environmental Council

Registered Professional Engineer:

Francis Catherine, P. Joseph Lehman, Inc. Consulting Engineers

Active Commercial Farm Owner or Operator:

William Neilson, Pennsylvania Farm Bureau

Non-voting alternates in attendance were:

Joseph Leighton, Associated Petroleum Industries of Pennsylvania

CALL MEETING TO ORDER

Judy Brackin called the June 7, 2016, meeting of the STAC to order.

APPROVAL OF MINUTES FROM DECEMBER 8, 2015, MEETING

The minutes from the December 8, 2015, meeting were approved as submitted, upon motion and seconded.

STAC MEMBERSHIP LIST

Charlie Swokel, DEP, reported that 14 of the 16 positions on the STAC are filled. The only vacancies are a local government seat and a member from the Pennsylvania Chemical Industry Council (PCIC). Mr. Swokel noted that the PCIC vacancy is in the process of being filled.

Since the last meeting, Gauttam Patel and Nancy Maricondi were reappointed to the STAC as the member and alternate member, respectively, representing the Petroleum Retailers & Auto Repair Association, Inc. Also reappointed were Timothy Bytner (member) and Meredith Odato Graham (alternate member) of Babst Calland representing the public. Lastly, Judy Brackin and Joseph Leighton were reappointed as the member and alternate member, respectively, representing the Associated Petroleum Industries of Pennsylvania.

Mr. Swokel stated that the term of Bob May (public member) expires June 30, 2016, and that the request to reappoint Mr. May to a four-year term is working its way through the approval process. Lastly, Mr. Swokel noted that the terms of David Gallogly (public member) and Scott Weaver (local government member) are expiring on July 31, 2016, and August 31, 2016, respectively. Mr. Swokel stated that DEP would be in contact with both individuals in the near future regarding reappointment to the STAC.

USTIF UPDATE

Next on the agenda, the Underground Storage Tank Indemnification Fund (USTIF) provided an update on their program activities. Amy Steiner, Claim Manager, Bureau of Special Funds, Department of Insurance, attended representing the USTIF.

Ms. Steiner stated that assets as of March 31, 2016, totaled \$300 million, as compared to \$294 million as of March 31, 2015. Liabilities as of March 31, 2016, stood at \$396 million, as compared to \$405 million at the same time last year. With regards to receipts, as of March 31, 2016, the fund took in \$48 million, as compared to \$59 million at the same time last year. Total disbursements as of March 31, 2016, totaled \$39 million, as compared to \$50 million at the same time last year. Ms. Steiner stated that as of March 31, 2016, the USTIF showed an unfunded liability of \$123 million and continues to decline. The deficit on March 31, 2015, was \$140 million.

Ms. Steiner reported that the number of claims filed with the USTIF during the first quarter of calendar year 2016 increased by 72%, as compared to the same time last year. For the first quarter of calendar year 2016, two Tank Installers Indemnification Program and 48 USTIF claims were filed. Twenty-four of the 48 USTIF claims reported were the result of discovering contamination during tank closure activities. The number of open claims stands at 1,126, and the USTIF is closing more claims than receiving new claims.

DEP UPDATE

Under the DEP update, Troy Conrad, DEP, Land Recycling Program, stated that the draft final rulemaking to revise Chapter 250 was unanimously approved by the Environmental Quality Board (EQB) on April 19. The Independent Regulatory Review Commission (IRRC) is

scheduled to take up the rulemaking at its June 30 meeting. Assuming approval of the rulemaking by the IRRRC, the Attorney General's Office will then have 30 days to review and act on the regulation. If all goes well, the regulation should be published in the *Pennsylvania Bulletin* and become effective in mid to late August. Mr. Conrad noted that the revised standards will apply to all final reports received after the effective date of the revised final rulemaking.

Mr. Conrad also stated that the program is in the process of finalizing the Vapor Intrusion Guidance. The final guidance is scheduled to be presented and discussed with the Cleanup Standards Scientific Advisory Board on July 16. Publication of the final guidance in the *Pennsylvania Bulletin* is anticipated in late August or early September. However, the guidance will not become effective until around November 1 to allow for training of DEP regional program staff and the consultant community. Webinars are being planned for July and August. In addition, classroom training through a partnership with the Pennsylvania Council of Professional Geologists will be conducted.

Lastly, Mr. Conrad noted that revisions to the Technical Guidance Manual are anticipated to be completed in February or March of 2017.

CHAPTER 245 REVISION CONCEPTS

Next on the agenda, Mr. Shiffer presented a continuation of proposed conceptual revisions to Chapter 245 first discussed at the December 8, 2015, meeting.

With regards to the certification program for installers and inspectors contained in Subchapter B of Chapter 245, DEP proposes to add a new certification category for underground storage tank (UST) minor modifications only. Minor modifications would include such activities as overfill replacements and replacing penetration boots in tank sumps. Mr. Shiffer stated that DEP is looking to require an applicant for the new certification category to complete 12 minor modifications in order to sit for the examination.

Also, concern has been expressed by the certified installer community that it is difficult to complete 9 installations in the 3-year period immediately prior to submitting the application for UST system installation and modification (UMX) certification. As a result, the DEP is thinking of changing the "total number of activities completed" requirement for UMX certification to "9 installations or major modifications (at least 6 installations)."

The next discussion focused on conceptual changes to permitting contained in Subchapter C of Chapter 245. At the December 8, 2015, meeting, DEP proposed requiring a Site-specific Installation Permit (SSIP) if an existing aboveground storage tank (AST) facility is adding an aggregate capacity in excess of 21,000 gallons. Based on the discussion at the prior meeting, and upon further consideration, DEP has decided to make no changes as to when an SSIP is required. So, the addition of greater than 21,000 gallons of aggregate capacity when installing all small ASTs at an existing AST facility will not require an SSIP, as the facility will not be considered a new large AST facility.

Mr. Shiffer then discussed DEP's current thinking as to the new operation and maintenance requirements that would need to be performed by DEP-certified individuals. Mr. Shiffer stated

that the periodic walkthrough inspections are maintenance and can be conducted by the storage tank owner or operator. DEP is proposing that overfill prevention equipment inspections be a certified activity performed by an individual with UMX certification or by an individual who obtains the new UST minor modification certification. With regards to containment sump and spill bucket testing, DEP is proposing that this be a certified activity to be performed by an individual with a UST system and storage tank facility inspection (IUM), UST system tightness tester (UTT), or UMX certification, or by an individual who obtains the new UST minor modification certification. Mr. May suggested that overfill prevention equipment inspections could be performed by a UTT and that same individual could be allowed to do the repair or replacement. This would eliminate the need to involve a UMX certified individual at an additional cost to the tank owner. A question was asked if an individual with UMX certification is needed to install sumps and spill buckets. Mr. Shiffer responded that is correct. Mr. Shiffer stated that DEP is proposing to require failures of overfill prevention equipment, and containment sump and spill bucket testing, be reported to DEP on DEP Testing Forms. This requirement would be added to § 245.132 relating to standards of performance for certified companies and individuals. The reporting of failures would be required within 48 hours of the failure. Timothy Bytner commented that the 48-hour timeframe for reporting may be too tight especially when involving weekends and holidays. Mr. Shiffer responded that the form can be submitted electronically and that there is already a requirement for certified individuals to report suspected or confirmed contamination to DEP within 48 hours. Dave Gallogly suggested that DEP consider a test failure as a suspected release so that the tank owner must investigate the potential problem. Mr. Gallogly noted that there is already a requirement in place for investigation of suspected releases. Mr. Shiffer responded that not all test failures are considered suspected releases. For example, failure of a flapper serving as overfill prevention is not an indication of a suspected release. Also, a crack in the top of a spill bucket or a dry and product-free containment sump, even though the spill bucket and containment sump fails a hydrostatic test, does not automatically trigger a suspected release investigation. Mr. May questioned what DEP will do with the report. Mr. Shiffer stated that the DEP response will depend on the situation. The response may be to contact the facility, certified individual, or both. DEP staff may also choose to visit the facility. Mr. May asked who all will get the reports. Mr. Shiffer stated that DEP will only receive report failures. Results of all tests should be maintained by the tank owner and individual that performs the test. William Neilson expressed concern that the testing form could be altered if the tester does not provide the form to the owner immediately following performing the test. Lastly, with regards to release detection testing, the thinking is to have the testing conducted by an individual trained and certified by the equipment manufacturer. If the manufacturer does not have a certification program, then the testing would need to be performed by an individual with UMX certification or by an individual who obtains the new UST minor modification certification.

Next, Mr. Shiffer reviewed the following proposed phase-in periods for the new operation and maintenance requirements:

Monthly walk-through inspection – 1 year from the effective date of the regulation.

3-year overfill prevention equipment inspection, spill bucket testing, and containment sump testing – 1 year from the effective date of the regulation, then phased in. Regulations become

effective on Day X; after 1 year, inspection/testing must be completed prior to the next facility operations inspection due date or 3 years from Day X, whichever is sooner.

Annual release detection equipment testing – 1 year from the effective date of the regulation.

Emergency generator tank release detection – For any emergency generator tank installed after the effective date of the regulation, release detection would be immediately required and be interstitial monitoring. For emergency generator tank systems with total secondary containment installed prior to the effective date of the regulation, release detection would be required within 1 year from the effective date of the regulation and could be any method of release detection. For emergency generator tank systems that do not have total secondary containment, release detection would be required within 2 years from the effective date of the regulation. Mr. May asked if monthly walk-through inspections will be required for emergency generator tanks. Mr. Shiffer responded that the inspections will be required.

The last subject up for discussion was the technical standards for large ASTs contained in Subchapter F of Chapter 245. At the December 8, 2015, meeting, DEP indicated that it would like to replace the language “monthly visual inspections” with “visual inspections at least once every 30 days.” Based on the discussion at the last meeting, and since DEP is proposing to require the visual inspection of large ASTs every 72 hours to be documented, DEP is now proposing to retain the current language.

Finally, DEP would like to add a timeframe for the tank owner to submit an updated Spill Prevention Response Plan (SPRP). Mr. Shiffer suggested implementation of the revisions immediately with amendments to be submitted within 120 days. For comparison purposes, the Federal Spill Prevention Control and Countermeasure (SPCC) Plan requires implementation as soon as possible and amendments within 6 months. The Preparedness, Prevention and Contingency (PPC) Plan requires amendments immediately.

Mr. Gallogly asked if DEP is concerned about the Federal requirement to have the revised Chapter 245 regulations in place within 3 years. Mr. Swokel responded that the Federal requirement is to have revised regulations and an application for State Program Approval (SPA) of the regulations to EPA within 3 years. Mr. Swokel stated that it is the DEP’s intention to meet that goal. However, in the event that the goal is not met, EPA will likely not take issue with DEP as long as progress toward finalizing a regulation and submitting a SPA package is being made. Mr. Swokel noted that this meeting marks the end of the presentation and discussion of conceptual revisions to Chapter 245. At the next STAC meeting, draft proposed rulemaking language will be presented to the committee. Mr. Swokel stated that DEP hopes to present proposed rulemaking to the Environmental Quality Board in early 2017.

STORAGE TANK FUND

Lastly on the agenda under the DEP update, George Hartenstein presented the financial status of the Storage Tank Fund. Mr. Hartenstein began by noting the various activities that are provided for by the Storage Tank Fund with regards to the regulation of ASTs and USTs. Program staff spends approximately 75% of their time on the UST program and 25% of their time on the AST program. Mr. Hartenstein stated that there are 110 positions on the Storage Tank Fund

complement to carry out these activities with 76% of the staff located in the DEP regional offices. At one point, there were 140 positions on the Storage Tank Fund complement. The storage tank program regulates over 40,000 ASTs and USTs at approximately 12,700 facilities, and has 1,900 open corrective action cases. This equates to 650 facilities per DEP field inspector and 70 corrective cases per project officer. Mr. Hartenstein explained that program revenue is obtained from AST and UST registration fees, federal grants, penalties, interest, cost recoveries, and a reimbursement from the USTIF for administrative corrective action costs up to \$3 million per year. Program expenditures are primarily driven by personnel costs which are rising. Mr. Hartenstein showed a chart depicting program revenue that is flat, significantly increasing costs, and a fund balance that is declining and projected to be depleted in state fiscal year 2017-18. It is projected that \$4 million in additional revenue will be needed to sustain the Storage Tank Fund for a period of approximately 10 years. Without additional revenue, the only choice will be to significantly reduce personnel, which will have significant negative impacts on the program. Mr. Hartenstein indicated that revenue proposals have been presented to DEP executive staff and the Governor's Office. Any revenue proposal involving an increase in storage tank registration fees would require legislation. Ms. Brackin asked if money was taken from the Storage Tank Fund in the past. Mr. Hartenstein responded that a \$100 million loan was taken from the USTIF when Mark Schweiker was serving as Governor during the final year of the Ridge administration. Mr. Gallogly asked if DEP can get more money from USTIF for corrective action. Mr. Hartenstein responded that it would take legislation, as the amount that can be currently reimbursed is capped at \$3 million. Ms. Brackin inquired what the registration fees would be if DEP sought to increase registration fees only. Mr. Swokel responded that you would be looking at a 50% increase for ASTs and a 300% increase for USTs. This increase is based on DEP staff spending 75% of their time on the UST program and 25% of their time on the AST program. The 300% increase in registration fees for USTs means going from a fee of \$50 per tank to \$200 per tank.

OTHER BUSINESS

Ms. Brackin asked the committee if there was any old business to discuss. There being none, under new business, Ms. Brackin asked if any non-STAC member in attendance wished to provide public comment. There being no one, Ms. Brackin noted that the remaining meeting dates for 2016 are September 6 and December 6.

ADJOURNMENT

The meeting was adjourned at 11:18 a.m., upon motion and seconded.