

**MINUTES OF THE  
STORAGE TANK ADVISORY COMMITTEE MEETING  
DECEMBER 8, 2009**

The Storage Tank Advisory Committee (STAC) met on December 8, 2009, at the Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg. Seven (7) voting members were present, which constituted a quorum.

Voting members in attendance were:

Local Government:

Jo Ellen Litz, County Commissioners Association of Pennsylvania  
Dennis R. Hameister, Pennsylvania State Association of Township Supervisors

Regulated Community:

Judy Brackin, Associated Petroleum Industries of Pennsylvania  
John Arnold, Pennsylvania Petroleum Marketers & Convenience Store Association  
Stephen Hieber, Tank Installers of Pennsylvania

Registered Professional Engineer:

Mark Onesky, Onesky Engineering, Inc.

Hydrogeologist:

Jan Peter Ilves, JPI Associates, Inc.

Non-voting alternates in attendance were:

Walter Rimmer, Tank Installers of Pennsylvania  
Michele Cipollone, Registered Professional Engineer

**CALL MEETING TO ORDER**

John Arnold, Committee Chairperson, called the December 8, 2009, meeting of the STAC to order.

**APPROVAL OF MINUTES FROM SEPTEMBER 8, 2009, MEETING**

The minutes from the September 8, 2009, meeting were approved as submitted, upon motion and seconded.

## STAC MEMBERSHIP LIST

Before discussing the status of the membership list, Charlie Swokel, DEP, introduced Todd Wallace, Acting Director for the Bureau of Waste Management. Mr. Wallace began this new assignment on October 26, 2009. Mr. Swokel also reported that both Ray Powers and Larry Frey are retiring in January 2010. All in attendance congratulated both on their retirement and accomplishments.

Mr. Swokel provided the following update to the STAC regarding the membership list:

Dennis Hameister and Holly Fishel have been reappointed to serve two-year terms as the member and alternate member, respectively, representing the Pennsylvania State Association of Township Supervisors (**local government** position on the STAC). DEP is working with the Pennsylvania League of Cities and Municipalities to provide a member to fill the lone local government vacancy.

John Arnold and John Kulik have been reappointed to serve two-year terms as the member and alternate member, respectively, representing the **Pennsylvania Petroleum Marketers and Convenience Store Association**. DEP is working with the **Petroleum Retailers and Auto Repair Association, Inc.** to fill the sole regulated community vacancy. Membership to this organization is provided by statute.

Efforts are underway to fill one of the two **public member** vacancies on the STAC.

DEP is working with the PA Farm Bureau to identify an **active commercial farm owner or operator** to serve as a member on the STAC. Kristina Watson, PA Farm Bureau, serves as the alternate member.

## DEP UPDATE

Kurt Klapkowski, DEP Program Counsel for the Storage Tank Program, provided an update on **Federal/State Legislation**. Mr. Klapkowski reported that no legislation on either level was actively moving. However, Mr. Klapkowski did state that the U.S. Environmental Protection Agency is scheduled to propose amendments to the Federal underground storage tank regulations contained in 40 CFR Part 280 in August 2010. The amendments would address recent Federal Energy Policy Act requirements and make revisions to the existing regulations that have been in place since 1988.

Dawn Heimbach, DEP, presented an update on the **Underground Storage Tank (UST) Pollution Prevention Program**. Since 1998, 1,024 grants have been approved for a total of \$5,264,401.13. For state fiscal year 2009-2010, 8 grants were approved for a total of \$56,848.95. There are no applications pending.

Craig Olewiler, DEP, provided an update on the **UST Environmental Cleanup Program**. For state fiscal year 2009-2010, DEP is addressing 18 state-lead and special projects having expended nearly \$221,000. With regards to the 18 state-lead and special projects being addressed in the current fiscal year 2009-2010, over \$2.3 million has been budgeted, and over

\$1,000,000 has been authorized to spend on projects. For fiscal year 2009-2010, 47 Heating Oil Cleanup Program grants have been awarded totaling nearly \$190,000. There are three applications pending. Concerning the catastrophic release allocation, three projects continue to be addressed. For fiscal year 2009-2010, \$13,453 has been expended, \$625,000 has been budgeted, and nearly \$600,000 has been authorized to spend on projects.

George Hartenstein, DEP, reported that **Federal Stimulus Funding** in the amount of approximately \$6,163,000 was received by Pennsylvania under a LUST Trust Fund grant. Mr. Hartenstein stated that 71 sites will be addressed utilizing the funding. State contractors have been issued notices to proceed for 41 sites and have begun field work at 24 sites. By the end of April 2010, EPA would like 15% of the funding expended and another 35% of the funding obligated. So far, DEP has expended \$100,000 (2%) and obligated \$4.24 million (69%). Mr. Hartenstein stated that quarterly reporting to EPA will include jobs created information. Lastly, Mr. Hartenstein reported that EPA plans to audit some of the projects.

Next on the agenda, Mr. Swokel reported on the **USTIB Allocation Requests**. The Underground Storage Tank Indemnification Board (USTIB) voted to defer taking action on the DEP requests until the December 17, 2009, meeting due to the fact that the actuarial report on the Underground Storage Tank Indemnification Fund (USTIF) was not available for the September 24, 2009 meeting. Nonetheless, DEP made the following allocation requests to provide funding through FY 10/11.

Under the UST Pollution Prevention Program, commonly called the "Pump and Plug" program, DEP requested a \$75,000 allocation. Under the UST Environmental Cleanup Program allocation that provides DEP with funding for state-lead and special project sites, and to provide grants to owners of underground heating oil storage tanks, DEP requested a \$2.525 million allocation. Under the UST Environmental Cleanup Program "Catastrophic Release" allocation, DEP requested a \$725,000 allocation. Lastly, DEP requested a \$2.025 million allocation to pay for DEP's UST administrative costs relating to corrective action. DEP also requested authorization to spend any of the unexpended prior year funds under all four allocations. In total, under all four allocations, DEP requested \$5.35 million.

Ray Powers, DEP, reported on **Significant Operational Compliance**. Significant Operational Compliance (SOC) is reported to EPA on a semi-annual basis and is measured by the results of initial third-party inspections conducted during the prior 12 months at underground storage tank (UST) facilities. For FFY 2009, Mr. Powers reported that over 3,200 inspections were performed. This represents an increase of about 1,200 inspections over the number of third-party inspections conducted during FFY 2008. UST facility operations inspections are now required every 3 years, as opposed to the prior requirement of inspections every 5 or 10 years. For FFY 2009, DEP reported an overall SOC rate of 76.3%, up 3.4% from our overall SOC rate of 72.9% at the FFY 2008 end-of-year. Also at the FFY 2009 end-of-year, SOC with release prevention (spill, overflow and corrosion) was 89.1% (up 0.2% from the end of FFY 2008), and SOC with release detection was 84.8% (up 3.6% from the end of FFY 2008). All of DEP's SOC rates exceed the national and EPA Region 3 state averages.

The status of the **UST Operator Training Final Rulemaking** was the next topic of discussion. Mr. Powers reported that the draft final rulemaking was approved by the Environmental Quality

Board (EQB) on September 15, 2009, for publication in the *Pennsylvania Bulletin* as final rulemaking. The rulemaking was also approved by the Independent Regulatory Review Commission on November 5, 2009. Publication in the *Pennsylvania Bulletin* is expected before the end of the calendar year. Once published, DEP will work with tank owners and organizations interested in developing training courses and begin to approve training courses. Mr. Powers indicated that DEP has begun to meet with firms interested in submitting their training courses to the Department for approval. Also, DEP has begun to develop program guidance and will be posting further information on the Web site. Mr. Powers stated that all operators must be designated and trained by August 8, 2012.

Next on the agenda, **USTIF** provided an **update** on their program activities. Steve Harman, Director, Bureau of Special Funds, attended representing the USTIF. Mr. Harman stated that both an up-to-date financial statement and the actuarial report will be available for the December 16, 2009, USTIB meeting. As a result, the DEP allocation requests made at the September USTIB meeting will be acted upon at that time. Mr. Harman stated that the USTIF remains in a good position to continue to pay reasonable costs associated with claims. While revenue has been down, for example, in the areas of throughput, investment income and general fund loan repayments, the USTIF has worked diligently to contain costs through the competitive bidding process and institution of the initial work plan requirement. At this point, Mr. Swokel noted that the number of new claims filed for calendar year 2009 will be the lowest since inception of the USTIF in 1994. This certainly has had an impact on keeping total expenditures down and extending the life of the USTIF.

Under **old business**, Troy Conrad, Director, DEP Land Recycling Program, reviewed the **draft proposed Uniform Environmental Covenants Act (UECA) and Chapter 250 rulemakings** with the committee. Mr. Conrad stated that both packages will be presented at the December 15, 2009, EQB meeting for approval as proposed rulemakings. In general, UECA requires remediators who use an engineering or institutional control to demonstrate the attainment of an Act 2 standard to place an environmental covenant on the remediated property or to obtain a waiver from DEP. As in prior meetings, Mr. Conrad reviewed the highlights of the proposed UECA rulemaking and stated that the rulemaking is relatively short and addresses the details that the UECA doesn't contain. Mr. Conrad reiterated that the rulemaking does not contain information as to how and when waivers will be granted. Waivers will be addressed through technical guidance that will accompany the UECA rulemaking. Mr. Conrad stated that the rulemaking includes a modest fee of \$350 that will be charged upon approval of the final environmental covenant by DEP. The rulemaking provides clarification as to the conversion of deed restrictions to environmental covenants. Mr. Conrad stated that UECA requires the conversion of prior instruments within 60 months. As suggested by the stakeholders group, Mr. Conrad stated that the rulemaking requires that the current property owner be required to convert the deed restriction to an environmental covenant. The environmental covenant need not contain any additional requirements beyond what is in the deed restriction. The rulemaking does contain a general waiver provision that allows the property owner to convert the deed restriction to an environmental covenant upon the sale of the property, as opposed to within 60 months, provided that a copy of the deed restriction is submitted to the Department along with proof that the deed restriction has been recorded with the County Recorder of Deeds. No fees will be required for the conversion of deed restrictions to environmental covenants.

Dennis Hameister asked for clarification as to how the deed restriction would apply if additional parcels of land are purchased that increase the size of the property. Mr. Conrad responded that the restrictions need only apply to the affected area of the property.

Mark Onesky asked for clarification with regards to Section 253.2(a)(2) of the draft proposed rulemaking regarding contents and form of environmental covenants. Specifically, Mr. Onesky asked what is meant by a legally sufficient description of the real property subject to the environmental covenant. Mr. Conrad stated that in most cases there will be a restriction on the land use or commitment not to use ground water. In that case, language can be taken directly from the deed restriction and inserted into the covenant. If the restriction applies to only a portion of the property, then a surveyor will be needed to identify the property area subject to the restriction. Mr. Onesky also questioned the \$350 fee mentioned earlier by Mr. Conrad along with the timing of the payment. Mr. Onesky's copy of the rulemaking contained a fee of \$250. Mr. Conrad stated that the fee is \$350 and is payable upon submission of the final environmental covenant with the remedial action completion report.

There being no further discussion with regards to the draft proposed UECA rulemaking, a motion to approve the UECA draft proposed rulemaking for presentation to the EQB was made by Mr. Hameister and seconded by Judy Brackin. Jo Ellen Litz commented that new rules should not apply to past problems. Ms. Litz stated that past problems should be grandfathered. There were six votes in favor of supporting the rulemaking, with Ms. Litz opposed.

Next, under **old business**, Mr. Conrad **discussed the revisions contained in the draft proposed Chapter 250 rulemaking**. To begin with, Mr. Conrad reviewed the highlights of the revisions that will include changes to the formulas that are utilized to arrive at the statewide health standards and to the statewide health standards themselves as a result of the adoption of EPA's revised Risk Assessment Guidelines for Superfund. The rulemaking requires that the DEP revisit the scientific information that relates to the basis of the statewide health standards every 36 months. The rulemaking also requires that a remediator evaluate the vapor intrusion pathway when selecting the statewide health standard. Also, text changes in the rulemaking address errors, omissions and clarifications of existing policy.

Mr. Conrad stated that the Department has reconsidered the proposed changes to the Statewide health standards for Methyl Tertiary Butyl Ether (MTBE) since the September 1, 2009 Cleanup Standards Scientific Advisory Board (CSSAB) meeting and decided not to change the MTBE standards at this time. The current Chapter 250 Statewide health cleanup standard for MTBE is 20 ug/l for groundwater used for drinking water. This 20 ug/l standard is the odor threshold for MTBE as published by the U.S. Environmental Protection Agency in the *"2006 Edition of the Drinking Water Standards and Health Advisories"* (EPA 822-R-06-013). The Department has decided that the previously considered revisions for MTBE included in the September 1, 2009 draft, which allowed for higher concentrations of MTBE based on health-based calculations, would have resulted in unacceptable taste and odor impacts on groundwater used for drinking water. These higher concentrations for MTBE would have been 190 ug/l for residential sites and 960 ug/l for non-residential sites.

Mr. Arnold asked DEP if there could be a litigation risk if the MTBE standard is not established in accordance with the statute. Mr. Conrad stated that the 20 ug/l level is closer to the health advisory level than anything and that the DEP believes it can defend the 20 ug/l level.

J. P. Ilves requested confirmation that the point-of-compliance will continue to be the property boundary and that for MTBE the level will be 20 ug/l. Mr. Conrad responded that that statement is correct.

Ms. Brackin stated that if aesthetics are a problem, then the process of establishing cleanup standards should be changed to deal with aesthetics. Ms. Brackin stated that there are certainly other substances that have aesthetic issues besides MTBE. As another option, Ms. Brackin recommended that DEP could clarify in the regulation that the statewide health standard for MTBE is being considered as a health advisory level. Ms. Brackin asked what the position of the CSSAB was with regards to the Chapter 250 revisions. Mr. Conrad stated that the CSSAB supported the Chapter 250 amendments with the exception of the establishment of the groundwater standard for MTBE.

Mr. Onesky echoed Ms. Brackin's concern about the process of establishing cleanup standards. Mr. Onesky stated that his clients had been told several months ago that the MTBE standards were changing, and now they are not. In addition, Mr. Onesky stated that upon review of Table 1 of the standards there are a lot of changes. Mr. Onesky noted that a total of 70 standards are going up and 37 standards are going down. Mr. Onesky observed that some of the changes are very dramatic (on the order of four magnitudes). In the case of standards going down, Mr. Onesky asked what the DEP position is going to be in terms of reopening the case. Mr. Conrad responded that a standard change does not automatically trigger a re-opener. DEP will need to examine all of the information including issues raised by external stakeholders. DEP would need to identify significant environmental concerns before deciding to reopen cleanup cases. Mr. Onesky stated that even if the cleanup standards for MTBE had been raised to 190 ug/l and 960 ug/l as initially proposed, impacted wells would still need to be addressed in accordance with the storage tank program regulations. Mr. Conrad acknowledged that the affected and diminished water supply provisions would take care of regulated storage tank release sites; however, those provisions would not apply to voluntary cleanup sites. In closing, Mr. Conrad stated that the groundwater standard of 20 ug/l for MTBE is being considered as a health advisory level for purposes of the rulemaking.

There being no further discussion with regards to the draft proposed Chapter 250 rulemaking, a motion to approve the draft proposed rulemaking for presentation to the EQB as proposed rulemaking was made by Mr. Hameister. The motion died for lack of a second. A motion to approve the Chapter 250 draft proposed rulemaking as written for presentation to the EQB as proposed rulemaking, with the exception of the proposed MTBE value in Table 1, Appendix A, was then made by Mr. Onesky and seconded by Mr. Ilves. The committee unanimously supported the motion on a vote of 7 members in favor and no members opposed.

Under **new business**, Mr. Hameister reported that he recently attended a public hearing in Williamsport concerning the State Water Plan. Mr. Hameister stated there was interesting discussion concerning Marcellus Shale issues and the storage of petroleum products. Mr. Swokel stated that DEP's Bureau of Oil and Gas Management has jurisdiction on the drilling

site. If there is storage of regulated substances off of the drilling site, then the storage tank program would have regulatory authority.

Walter Rimmer, Executive Director, Tank Installers of Pennsylvania (TIP), announced that the TIP Annual Meeting will be held at the Harrisburg Sheraton on February 10, 2010.

Lastly, under **new business**, Mr. Arnold reminded everyone of the **meeting dates for 2010, which are as follows: March 9, June 8, September 14 and December 7.**

The **meeting was adjourned**, upon motion and second.