

**MINUTES OF THE  
STORAGE TANK ADVISORY COMMITTEE MEETING  
SEPTEMBER 9, 2014**

The Storage Tank Advisory Committee (STAC) met on September 9, 2014, at the Rachel Carson State Office Building, 400 Market Street, Room 105, Harrisburg. Twelve (12) voting members were present, which constituted a quorum.

Voting members in attendance were:

Local Government:

Scott Weaver, Pennsylvania State Association of Boroughs  
Tyler Courtney, County Commissioners Association of Pennsylvania  
Dennis Hameister, Pennsylvania State Association of Township Supervisors

Regulated Community:

Joseph Leighton, Associated Petroleum Industries of Pennsylvania  
John Arnold, Pennsylvania Petroleum Association  
Nancy Maricondi, Petroleum Retailers & Auto Repair Association, Inc.  
Scott Nowicki, Pennsylvania Chemical Industry Council  
Stephen Hieber, Tank Installers of Pennsylvania

Public:

Timothy Bytner, Babst Calland  
David Gallogly, Pennsylvania Environmental Council

Registered Professional Engineer:

Francis Catherine, Northwind Engineering, LLC

Hydrogeologist:

Mark Miller, Moody and Associates, Inc.

Non-voting alternates in attendance were:

Lisa Schaefer, County Commissioners Association of Pennsylvania  
Sarah Battisti, Pennsylvania Chemical Industry Council

**CALL MEETING TO ORDER**

John Arnold called the September 9, 2014, meeting of the STAC to order.

## **APPROVAL OF MINUTES FROM DECEMBER 3, 2013, MEETING**

The minutes from the December 3, 2013, meeting were approved as submitted, upon motion and seconded.

### **STAC MEMBERSHIP LIST**

Charlie Swokel, DEP, reported that 13 of the 16 positions on the STAC are filled. The three vacant seats are as follows:

1. Local Government
2. Active Commercial Farm Owner/Operator
3. Public member

However, Mr. Swokel stated that the public member vacancy will be filled by Charles Frey, Jr., Vice President, Highland Tank & Mfg. Co., Manheim, PA, effective October 1, 2014.

Mr. Swokel welcomed Tyler Courtney, Westmoreland County Commissioner, representing local government and the County Commissioners Association of Pennsylvania, and Scott Weaver, Manager, Borough of Marysville, Perry County, representing local government and the Pennsylvania State Association of Boroughs, to their first STAC meeting.

Lastly, Mr. Swokel introduced Keith Salador as the DEP attorney newly assigned to counsel the Storage Tank Program. Mr. Salador assumed his new role on August 11, 2014.

### **USTIF UPDATE**

Next on the agenda, the Underground Storage Tank Indemnification Fund (USTIF) provided an **update** on their program activities. Steve Harman, Director, Bureau of Special Funds, Department of Insurance, and Executive Director, Underground Storage Tank Indemnification Board (USTIB), attended representing the USTIF.

Mr. Harman stated that assets as of June 30, 2014, totaled \$275 million, as compared to \$245 million at the same time last year. The increase in assets is primarily due to better investment returns and more favorable claim experience. Mr. Harman stated that liabilities as of June 30, 2014, stood at \$442 million, as compared to \$441 million at the same time last year. As of June 30, 2014, the USTIF shows an unfunded deficit of \$167 million. The deficit last year was \$195 million and continues to go down. With regards to receipts, for the fiscal year ending June 30, 2014, the fund took in \$82 million as compared to \$78 million for the prior fiscal year. Disbursements for the fiscal year ending June 30, 2014, totaled \$41 million as compared to \$43 million for the prior fiscal year. It was noted that net receipts over disbursements for the fiscal year ending June 30, 2014, were \$29 million as compared to \$24 million for the prior fiscal year.

On the subject of the general fund loan, Mr. Harman stated that the new Memorandum of Understanding (MOU) memorializing how the loan made to the general fund is scheduled to be

repaid has been signed. The first payment under the new MOU is due approximately one year from now. Mr. Harman stated that \$67.5 million of principal remains to be repaid on the loan.

Next, Mr. Harman reported that they have selected ICF, the current third-party administrator for the USTIF, to continue to provide claims administrative services and other administrative services. However, under the new contract, ICF will be required to provide expanded services to the USTIF. Mr. Harman stated that the USTIF will have its own dedicated website. The website will provide tank owners, tank installers, and product distributors with more information about the USTIF and allow for interaction with tank owners and tank installers. In addition, a shift will be made from paper to electronic billing.

Dennis Hameister inquired as to the amount and terms of the original general fund loan. Mr. Harman stated that the loan originated in 2002, was for \$100 million, and was to be repaid in ten years. The loan and accrued interest was to be repaid in total this past June. To date, only \$32.5 million in principal has been repaid. Mr. Harman noted that \$14 million in interest has accrued on the loan.

David Gallogy asked if the new RFP would provide the capability to determine past USTIF fees due. Mr. Harman stated that the USTIF does not have the resources to investigate past unpaid fees. However, when the new reporting system is functional, failure to pay throughput fees will be identifiable.

Scott Nowicki asked if the competitive bidding process would be moving to the USTIF dedicated website. Mr. Harman responded in the affirmative and stated that all things relating to USTIF would be moving to the dedicated website.

## **DEP UPDATE**

At the request of Nancy Maricondi, Ron Gray, Chief of the Division of Compliance and Enforcement, Bureau of Air Quality, attended and provided a **Stage II Vapor Recovery Progress Update**.

Mr. Gray began by stating that Stage II using vacuum-assist equipment is a program for which emission benefits are diminishing over time due to the presence of onboard vapor recovery systems. EPA issued guidance in 2012 establishing requirements states must meet to gain EPA approval to remove Stage II requirements from regulation. The guidance specified de minimis emission levels beneath which a state can repeal the Stage II requirements. Mr. Gray stated that Pennsylvania won't get to those levels until mid-2017.

Mr. Gray reported that Stage II vapor recovery systems are installed at about 1,600 gasoline dispensing facilities in the Philadelphia and Pittsburgh-Beaver Valley areas. Mr. Gray stated that DEP wishes to relieve the economic burden associated with maintenance and annual compliance testing of Stage II systems while continuing to ensure that emissions of volatile organic compounds to the atmosphere from vehicle refueling are not a detriment to the environment. As a result, The Notice of Suspension of Enforcement of the Stage II Vapor Recovery Requirements for Control of Emissions of Volatile Organic Compounds from New and Newly Affected Gasoline Dispensing Facilities in the Philadelphia and Pittsburgh-Beaver Valley Areas, posted

by DEP in the August 18, 2012 Pennsylvania Bulletin, suspends enforcement of the Stage II vapor recovery requirements with regard to new gasoline dispensing facilities. This enforcement discretion notice is in keeping with EPA's guidance. It does not provide protection from third-party action, however. Mr. Gray stated this enforcement discretion is still in effect, and he doesn't expect it to be repealed.

In February 2013, DEP distributed a survey to gasoline dispensing facilities located in the Philadelphia and Pittsburgh- Beaver Valley areas subject to Stage II vapor recovery requirements in order to evaluate the costs, benefits and effectiveness of the existing Stage II program. The approximately 1,600 survey responses have provided detailed information regarding gasoline sales throughput and vapor control systems presently in place. Mr. Gray reported that the surveys identified the presence of dripless nozzles, low-permeation hoses, and 41 vapor processors.

Also, DEP conducted analyses of Stage II vapor recovery options and provided regulatory options to the DEP executive staff on July 1, 2013. In short, Pennsylvania would have to demonstrate to EPA a 1.35-ton-per-day emission reduction to justify relieving the Stage II requirement in 2014, or 0.89-ton-per-day reduction in 2015. Mr. Gray reiterated that, until mid-2017, Pennsylvania is gaining more benefit from having the Stage II requirements. After mid-2017, Pennsylvania will be causing more damage by keeping Stage II. Mr. Gray also reported that they are constantly monitoring other state stakeholder processes and regulations.

Mr. Gray stated that they recently entered into a Consent Order and Agreement (CO&A) with Sheetz, Inc., to allow installation of alternatives in order to meet Stage II requirements. The CO&A involves a high-volume, 24-hour facility in Westmoreland County that formerly had a Stage II system and a small-volume, non-24-hour facility in Huntingdon County that did not have a Stage II system. Under the CO&A, Sheetz is providing continuous monitoring for DEP that will determine whether additional control measures will be required at the Westmoreland County facility.

Steve Hieber asked if other states are doing testing like DEP is requiring of Sheetz. Mr. Gray indicated that they are not. Mr. Hieber asked about the decommissioning date of 2017. Mr. Gray responded that a lot of information may become evident between now and that date. Mr. Gray believes that there will be considerable pressure to eliminate the Stage II requirements prior to that date. Mr. Gallogy inquired as to whether DEP has taken any enforcement action against an operator for removal of Stage II equipment. Mr. Gray stated only at the Sheetz facility in Westmoreland County, which has entered into a CO&A with DEP.

Next on the agenda, Kris Shiffer, DEP, reported on the **Federal UST Regulations**. Mr. Shiffer informed the committee that EPA is targeting fall of 2014 for publication of the final rule. EPA has been silent on informing states as to the changes made to the proposed rule based on comments received.

Mr. Shiffer then informed the committee about the **Alternative Fuel Storage Tank Installation/Conversion Form**. In June, an email was sent to all certified individuals informing them about the creation of this new form and when it is to be completed. The form is applicable to all underground storage tank systems and aboveground storage tank systems used for motor

vehicle fueling where alternative fuel blends will be stored. This means gasoline-ethanol blends containing greater than 10% alternative fuel (e.g. E15, E85) or biodiesel or biodiesel blended fuel containing greater than 5% biodiesel. The certified installer is required to sign the form and provide the model/brand for each piece of equipment along with the equipment manufacturer. It must be shown that each system component is recognized by an independent testing lab, manufacturer-verified, or certified by a professional engineer, to be compatible with the substance stored. To date, the program has received two forms, both of which were flagged for piping sensors not being compatible with E85.

The status of the “**Guidelines for the Evaluation of UST Cathodic Protection Systems**” **Draft Technical Guidance** was the next topic of discussion. Mr. Shiffer explained that cathodic protection results are often submitted as notes on a piece of paper. As a result, there is the need for consistency in how cathodic protection results are recorded and reported to DEP. A guidance document is being worked on and the draft document will be shared with the committee prior to publishing it for public comment. The guidance document will include a form to include all changes that are likely to be included in the final EPA regulation. The program is also looking to develop more standardized forms, especially with the increased testing that likely will be required by EPA’s final rule.

Next, George Hartenstein, DEP, discussed the **Removal of Separate Phase Liquids at Storage Tank Corrective Action Sites**. Mr. Hartenstein stated that the Technical Guidance Manual for the Land Recycling Program is currently under revision. One section of the current Technical Guidance Manual discusses how to clean up separate phase liquids using the concept of maximum extent practical in accordance with EPA guidelines. There has been a lot of work done on the topic of separate phase liquids by national organizations like the Interstate Technology Regulatory Council. Program staff would like to take advantage of this work and update our guidance to explain how we expect consultants to remediate separate phase liquids. The program established an internal work group and developed a conceptual framework for how separate phase liquids will be addressed going forward. The revised approach was presented to the Cleanup Standards Scientific Advisory Board (CSSAB) this past July and was positively received. Mr. Hartenstein explained that there are three objectives to dealing with separate phase liquids: 1) prevent migration to uncontaminated areas, 2) prevent human health and environmental threats, and 3) continue with removal until no further reduction in mass is achieved. Mr. Hartenstein stressed the importance of adequately characterizing the site. This will allow for a more expedited determination of whether continual removal of separate phase liquids is worth it or not. Mr. Hartenstein stated that the one missing piece that still needs to be addressed in the proposal is how much separate phase liquid needs to be removed under each of the cleanup standards. The CSSAB Attainment Subcommittee will be reviewing the proposal and offering suggestions as to how to deal with this one final issue.

Mr. Gallogy asked if one can meet the Statewide health standard by leaving product in the ground. Mr. Hartenstein responded that the program is not dismissing the idea that one can meet the Statewide health standard by leaving a small amount of product in the ground.

Lastly under the DEP update, Troy Conrad, DEP, **Land Recycling Program**, began by providing an update on the status of the revisions to the Chapter 250 regulations. Mr. Conrad stated that the proposed revisions to Chapter 250 were published in the Pennsylvania Bulletin in

May 2014 with a 30-day public comment period. The comment period closed on June 17, and comments were received from two commentators. The first commentator expressed concern that DEP was retaining the groundwater standard for MtBE at 20 ppb. The other commentator noted that the proposed soil standards for strontium and vanadium are being set at levels similar to native soil. Mr. Conrad stated that the draft final rulemaking will be discussed with the CSSAB at their meeting in December.

Mr. Conrad also stated that the program is in the process of revising the Vapor Intrusion Guidance. EPA published two Vapor Intrusion Guidance documents over the past two years. One guidance focused on petroleum products and the other on non-petroleum products. DEP has incorporated elements from the EPA guidance into the revised guidance that will be discussed with the CSSAB at their December meeting. Mr. Conrad stated the revised guidance will contain options to screen out sites, evaluation methods for other sites, and a lot of flexibility in order to achieve remediation endpoints. It is anticipated that petroleum sites should be screened out early in the process as petroleum vapors are less likely to migrate into low-lying structures than other chemicals. Mark Miller asked if the Vapor Intrusion Guidance will be issued as a stand-alone document. Mr. Conrad responded that it is the program's intention to issue the revised Vapor Intrusion Guidance because it is running ahead of the Technical Guidance Manual (TGM) revisions. However, the Vapor Intrusion Guidance will be incorporated into the TGM. When the revised TGM is issued, the program will rescind the stand-alone Vapor Intrusion Guidance.

Lastly, Mr. Conrad reported that the TGM is in the process of being updated. The TGM is a large, more complicated document that covers a wide variety of topics. The TGM includes policy and is the program's user guide. At the present time, the program is looking at issuing a revised TGM in approximately 18 to 24 months which will incorporate the Vapor Intrusion Guidance and separate phase liquid concepts.

Mr. Arnold asked the committee if there was any **old business** to discuss. Mr. Hameister inquired as to compliance with the operator training requirements. Mr. Shiffer stated that the pink information sheet is still being provided to owners, and the program will be looking to see if any revisions to the sheet need to be made. The program's Registration Unit checks to see if operators have been identified when tanks are brought back into use, there is a change of ownership, and there are new tanks installed. Mr. Shiffer stated that the compliance rate with the operator training requirements has been hanging in the low 80s. Mr. Hameister asked if compressed natural gas (CNG) is regulated by the program. Mr. Shiffer stated that CNG is not a regulated substance and therefore not regulated by the storage tank program. Mr. Hieber added that the Department of Labor and Industry issues permit and inspects CNG tanks.

Mr. Gallogly asked if DEP could comment on its policy regarding temporarily out-of-use (TOS) tanks. Mr. Gallogly stated there are a lot of tanks in the ground and there is the three-year requirement. Is the DEP granting three-year extensions, one-year extensions? Is there any attempt to someday remove the tanks from the ground? Mr. Shiffer stated that the program is still issuing three-year extensions provided the tank is in compliance, the owner is viable, all fees are paid, and required inspections are being conducted. Mr. Shiffer noted that the DEP can impose additional requirements such as sampling and tightness testing prior to granting any extension. Mr. Gallogly expressed concern that if owners are being provided with multiple

extensions, they may not have the necessary fee documentation when they do remove the tanks. Then, if there is contamination discovered during tank removal, USTIF will deny coverage for the cleanup, there is no money for the cleanup, and the properties lay dormant. Mr. Shiffer stated that DEP could impress upon tank owners to keep good records with regards to delivery receipts. Mr. Gallogly stated that companies have policies that require them to keep records only for a period of several years. Mr. Gallogly requested that the DEP look at the three-year extension policy and perhaps change it to one year. In addition, Mr. Gallogly requested that DEP ask tank owners to keep good records. Mr. Harman also expressed concern that multiple extensions will likely lead to the owner having no USTIF coverage when the tanks are removed and there is contamination. Mr. Arnold suggested that tank owners be informed of the downside of not keeping throughput records prior to determining whether or not to seek an extension. Mr. Swokel stated that to require tank owners who likely do not have the financial means to remove tanks that are in compliance would put a strain on program resources. Mr. Bytner stated that he has had to deal with coverage denial for failure to produce records and suggested that perhaps a statute change to require distributors to maintain records should be considered.

Under **new business**, Mr. Arnold explained the process involved in the **Election of Officers** and asked for three volunteers to serve on the Nominating Committee. Mr. Arnold **appointed** the following individuals **to the Nominating Committee**: Dennis Hameister (Chairperson), Dave Gallogly and Tim Bytner. Mr. Arnold stated that the list of nominees for the positions of Chairperson and Vice-Chairperson needs to be provided to Mr. Swokel by November 4. Mr. Hameister asked Mr. Arnold if he was interested in serving another term as Chairperson. Mr. Arnold stated that he would entertain continuing in his present position for another term. Mr. Swokel inquired if there were any other members interested in serving as either Chairperson or Vice-Chairperson for the next term. No committee members expressed interest in serving in either position.

Mr. Arnold noted that the **remaining meeting date for 2014** is December 2.

The meeting was **adjourned** at 11:32 a.m., upon motion and seconded.