

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

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

Voting members and alternate 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
Pamela Witmer, Pennsylvania Chemical Industry Council
Stephen Hieber, Tank Installers of Pennsylvania

Public Members:

Robert May, Synergy Environmental, Inc.

Registered Professional Engineer:

Mark Onesky, Onesky Engineering, Inc.

Hydrogeologist:

Jan Peter Ilves, JPI Associates, Inc.

Non-voting alternates in attendance were:

No non-voting alternates were in attendance.

CALL MEETING TO ORDER

Judy Brackin, Committee Vice-Chairperson, called the September 8, 2009, meeting of the STAC to order.

APPROVAL OF MINUTES FROM JUNE 9, 2009, MEETING

The minutes from the June 9, 2009, meeting were approved as submitted, upon motion and seconded.

STAC MEMBERSHIP LIST

Charlie Swokel, DEP, provided the following update to the STAC:

The **Alliance of Automotive Service Providers (AASP) of Pennsylvania** position remains vacant. This is a position provided to the AASP under the Storage Tank and Spill Prevention Act.

Efforts are underway to identify individuals interested in serving as **local government** and **public members** on the STAC. There is one local government vacancy and two public member vacancies.

Jo Ellen Litz and Kristen Goshorn have been reappointed to serve two-year terms as the member and alternate member, respectively, representing the County Commissioners Association of Pennsylvania (**local government** position 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**. First, Mr. Klapkowski reported on state HB 681 that would require increased payments from the USTIF for certain past-approved claims, sunset the heating oil cleanup program on June 30, 2010, and expand the “pump and plug” grant program to tanks that have been upgraded. Mr. Klapkowski stated that HB 681 has not moved out of the House Environmental Resources and Energy Committee.

Mr. Klapkowski also reported that state SB 84 was signed into law on July 27, 2009. This bill amends Act 3 of 1995, known as the Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act, by providing for limitation of economic development agency environmental liability and for defenses to liability.

Lastly, Mr. Klapkowski reported on state SB 880, the “Brownfields Redevelopment Act,” that would provide for reimbursement of up to 75% of the redeveloper’s cost to be paid out of the tax revenue generated from the development that occurs on the piece of property. SB 880 was reported out of the Senate Environmental Resources and Energy Committee, received first consideration by the Senate, and was then referred to the Senate Appropriations Committee, in June.

Dawn Heimbach, DEP, presented an update on the **Underground Storage Tank (UST) Pollution Prevention Program**. Since 1998, 1,017 grants have been approved for a total of \$5,215,052.18. For state fiscal year 2008-2009, 33 grants were approved for a total of nearly \$208,000. For the current fiscal year 2009-2010, only one grant has been approved for \$7,500. There are no applications pending.

George Hartenstein, DEP, provided an update on the **UST Environmental Cleanup Program**. For state fiscal year 2008-2009, DEP addressed 17 state-lead and special projects expending over \$873,000 with still some additional payments pending. With regards to the 18 state-lead and special projects being addressed in the current fiscal year 2009-2010, over \$1.5 million has been budgeted, and over \$325,000 has been authorized to spend on projects. For fiscal year 2008-2009, 127 Heating Oil Cleanup Program grants were awarded totaling over \$496,000. For the current fiscal year, 15 grants have been awarded totaling nearly \$60,000. There are no applications pending. Concerning the catastrophic release allocation, three projects continue to be addressed. For fiscal year 2008-2009, over \$482,000 was expended with still some additional payments pending. For the current fiscal year, nearly \$560,000 has been budgeted, and over \$390,000 has been authorized to spend on projects.

George Hartenstein 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. Most of the sites are old, abandoned gasoline stations and the name and location of all 71 sites were identified in two press releases issued by DEP. State contractors have begun work on some of the sites. By the end of April 2010, EPA would like 15% of the funding expended and another 35% of the funding obligated. By the end of the grant period (September 30, 2011), Pennsylvania's goal is to complete 40 site characterizations and 30 cleanups.

Next on the agenda, Eric Lingle, DEP, reported that all of the November 10, 2007, regulatory changes pertaining to the certification program will be fully implemented by November 10, 2009. Beginning November 10, Mr. Lingle stated that **certification renewals for tank handlers** will require attendance at a DEP-provided administrative training session. Administrative training is offered monthly in the DEP regional offices on a rotating basis. DEP has been notifying certified individuals of this requirement to attend administrative training and published an UPDATE article on August 6 concerning this new requirement. Mr. Lingle also stated that, beginning November 10, renewal of certification will no longer be based on activities completed. The only options will be to renew through testing or attendance at applicable technical training. A list of approved training courses is maintained on the storage tank program Web site.

The status of the **UST Operator Training Final Rulemaking** was the next topic of discussion. Ray Powers, DEP, reported that the draft final rulemaking will be considered by the Environmental Quality Board (EQB) on September 15 (next Tuesday) for publication in the *Pennsylvania Bulletin* as final rulemaking. Following the anticipated approval by the EQB, the rulemaking must also be approved by the Independent Regulatory Review Commission and the Attorney General. Barring any problems as the final rulemaking moves through the regulatory process, 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 we have begun to meet with firms interested in submitting their training courses to DEP for approval. Indications are that training course cost is on the way down and is expected to come down further as other states begin to develop their operator training programs. Mr. Powers stated that all operators must be designated and trained by August 8, 2012. Mr. May inquired about the costs of training. Mr. Powers stated that on-line Class A and Class B training will likely be in the \$100 range per course.

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 the upcoming September 24 Underground Storage Tank Indemnification Board (USTIB) meeting will be lacking the financial information that is normally presented at the third quarter meeting of the USTIB. To begin with, the Comptroller's Office has been involved in both a reorganization and financial transformation initiative that has resulted in considerable delay of the usual financial statements that are made available to the USTIF. The February 2009 financial statement was the last report seen by the USTIF and the USTIB. Secondly, a new USTIF actuary has been hired and the USTIF actuarial report will not be available for the September USTIB meeting. Both an up-to-date financial statement and the actuarial report are not expected until the December USTIB meeting. As a result, the DEP allocation requests that will be made at the September USTIB meeting will likely not be acted upon until December.

Mr. Harman also reported that due to the budget impasse this year, the loan repayment amount for state fiscal year 2009-2010 to be made to the USTIF remains unknown. However, the latest Governor's budget included no repayment for fiscal year 2009-2010.

Lastly, Mr. Harman stated that the USTIB, as the STAC, also has a local government vacancy. If anyone is interested in this position and has knowledge on underground storage tanks, Mr. Harman stated that he may be contacted for further information. Governor's Office approval must be received for all USTIB members.

Ms. Brackin inquired if there was any **old business**. There being none, under **new business**, Troy Conrad, Director, DEP Land Recycling Program, provided an update on Land Recycling Program activities as they affect storage tank cleanup efforts. Mr. Conrad **reviewed the draft Uniform Environmental Covenants Act (UECA) rulemaking** with the committee. 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. Mr. Conrad began by stating that the draft rulemaking is relatively short and addresses the details that the UECA doesn't contain. The rulemaking contains standard definitions with the exception of the term "instrument". The term "instrument" has been defined in the rulemaking to only include legal documents such as a deed restriction. The rulemaking outlines the required information that must be contained in an environmental covenant, contains specific milestones for the submission and review of draft and final environmental covenants, and places requirements on the County Recorder of Deeds. With submission of each final environmental covenant, a fee of \$250 will be required. 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. 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.

Mr. Harman asked what happens if someone does not convert the deed restriction to an environmental covenant. Mr. Conrad stated that they will be utilizing a contractor to review regional office files to identify sites with potential prior instruments. Also, while failure to convert a deed restriction does not invalidate the deed restriction, DEP does have the enforcement authority to follow-up on non-compliance with UECA requirements.

Ms. Brackin questioned how one would apply for a waiver. Mr. Conrad responded that a standard form will be developed to facilitate applying for the waiver and that a copy of the deed restriction and proof of recordation can be attached to the form. Upon approval of the waiver, the information will then be added to the on-line UECA registry.

Mr. Onesky inquired as to when the regulations and technical guidance are expected to be finalized. Mr. Conrad indicated that best-case scenario would be late fall 2010. Ms. Brackin asked when the proposed rulemaking is expected to be presented to the EQB. Mr. Conrad stated late 2009 or early 2010.

Mr. Harman asked if an environmental covenant can be removed at some future time. Mr. Conrad stated that the covenant is required as long as there is a continuing obligation. If additional remediation results in no further need for the covenant, DEP will support the removal of such restriction.

Next, under **new business**, Dave Crownover, DEP Land Recycling Program, **discussed the revisions contained in the draft Chapter 250 rulemaking**. To begin with, the revisions 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. Crownover stated that with regard to the tables of statewide health standards, there are not a lot of significant changes that will affect storage tank cleanups. Storage tank cleanups rely on the "short list" of regulated substances. Mr. Crownover indicated that the most significant change is that the groundwater standard for MtBE will be going from 20 ppb to 190 ppb for residential sites and to 960 for non-residential sites. Mr. Onesky noted that this revision of the MtBE standard is not reflected in Table 1 of the standards. The Land Recycling Program stated that they will assure that all tables on the Web site are up to date with the latest revisions to the standards. Jim Shaw, Land Recycling Program, also noted that some of the polycyclic aromatic hydrocarbon (PAH) standards are changing. For instance, the residential soil standard for benzo[a]anthracene is going down, while some of the non-residential soil standards for the PAHs are going up slightly. Mr. Onesky asked about the effective date of the revised standards. Mr. Crownover responded that the revisions would take effect upon publication in the *Pennsylvania*

Bulletin as final rulemaking. A question was raised that if a standard is now more stringent, does that mean that the case can be reopened. Mr. Conrad stated that that can be justification for a re-opener; however, significant environmental concerns with regards to the specific regulated substance would need to be evident in order for the Department to re-open a large number of cases. Jim Miceli, USTIF, expressed a concern that cleanups may change course (e.g. from the site-specific to the statewide health standard) or be delayed once it becomes known that, for instance, the MtBE groundwater standard is significantly increasing. Mr. Onesky concurred with Mr. Miceli. Jan Peter Ilves asked if on a completed cleanup the standard changes to the point that a covenant is no longer required, is there an automatic release of the covenant. Mr. Conrad and Mr. Klappowski stated that there would be no automatic release unless there was something in the covenant that provided for such a release. Under almost all circumstances, a formal process would need to be followed to have the covenant released.

Mr. Conrad reported that the Cleanup Standards Scientific Advisory Board concurred with proceeding with the amendments to Chapter 250 and also agreed to provide a letter of support to DEP regarding the draft UECA rulemaking. Mr. Conrad requested a letter from the STAC supporting moving forward with both the Chapter 250 amendments and the UECA rulemaking. The STAC voted to table taking action on both rulemakings until the December meeting of the STAC.

Lastly, under **new business**, Ms. Brackin reminded everyone that the **final meeting date for 2009 will be December 8th**. The STAC voted to **approve the meeting dates for 2010 as follows: March 9, June 8, September 14 and December 7.**

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