

**MINUTES OF THE  
STORAGE TANK ADVISORY COMMITTEE MEETING  
JUNE 9, 2009**

The Storage Tank Advisory Committee (STAC) met on June 9, 2009, at the Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg. Nine (9) 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  
John Kulik, Pennsylvania Petroleum Marketers & Convenience Store Association  
Elizabeth Fernandez, Pennsylvania Chemical Industry Council  
Walter Rimmer, Tank Installers of Pennsylvania

Public Members:

Robert May, Synergy Environmental, Inc.  
Stephen Benes, Hermitage, PA

Registered Professional Engineer:

Mark Onesky, Onesky Engineering, Inc.

Non-voting alternates in attendance were:

Rolf Hanson, Associated Petroleum Industries of Pennsylvania

**CALL MEETING TO ORDER**

Judy Brackin, Committee Vice-Chairperson, called the June 9, 2009, meeting of the STAC to order.

**APPROVAL OF MINUTES FROM MARCH 10, 2009, MEETING**

The minutes from the March 10, 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 continue to seek interest from the PA League of Women Voters to serve as a **public** member.

J.P. Ilves has been reappointed to serve another two-year term as the member representing the **Hydrogeologists**. Bill Minnick continues as the alternate member.

Mark Onesky has been appointed to serve a two-year term as the member representing the **Registered Professional Engineers**, and Michele Cipollone to serve a two-year term as the alternate member representing the Registered Professional Engineers.

Christine Dixon has been appointed to serve as the alternate member representing the **Pennsylvania State Association of Boroughs** (Local Government position on the STAC). Christine replaces Rebecca Kocher who is no longer with the Association. Christopher Cap serves as the member.

Jennifer Harry, who served as the member representing the **PA Farm Bureau**, has left Farm Bureau. Farm Bureau will be nominating a new member to the STAC. Kristina Watson 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 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 has been referred to the Senate Environmental Resources and Energy Committee.

Troy Conrad, Director, DEP **Land Recycling Program**, provided an update on Land Recycling Program activities as they affect storage tank cleanup efforts. Mr. Conrad reported on implementation of the Uniform Environmental Covenants Act (UECA). 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 part of implementing UECA, Mr. Conrad stated that the program is

moving forward with a separate rulemaking to address the details that the UECA doesn't contain. The rulemaking is expected to address the timing of submission of draft and final environmental covenants, any appropriate fees, and the conversion of deed restrictions to environmental covenants. Mr. Conrad stated that an external stakeholders group met on March 13<sup>th</sup> to specifically discuss the conversion of deed restrictions to environmental covenants that UECA requires within 60 months of the effective date of the UECA. Mr. Conrad stated that the stakeholders group suggested that the current property owner be required to convert the deed restriction to an environmental covenant; a general waiver be provided to allow the property owner to convert the deed restriction to an environmental covenant within 60 months of the effective date of the UECA or upon the sale of the property, whichever is later; a centralized review of the instruments to be converted be conducted; and the environmental covenant require no additional requirements beyond what is in the deed restriction. The stakeholders group is scheduled to meet again in July to continue their discussions to include a look at a conversion waiver for innocent property owners. Mr. Conrad indicated that the program hopes to have draft regulatory language to share with the various advisory groups in mid-August.

Mr. Conrad reported that they continue to move forward with revisions to the Land Recycling Program regulations contained in Chapter 250. The revisions will include some changes to the statewide health standards as a result of the anticipated adoption of EPA's revised Risk Assessment Guidelines for Superfund. The rulemaking will also add a requirement that the DEP revisit the statewide health standards every two years, and the remediator evaluate the vapor intrusion pathway when selecting the statewide health standard. Mr. Conrad expects to have a draft of the rulemaking in August.

Mr. Conrad also stated that the post-remediation care requirements under the Land Recycling Program are being evaluated to determine if they are appropriate or overly conservative. Post-remediation care requirements have been an obligation of the remediator since the inception of the Land Recycling Program in 1995. If post-remediation care requirements are determined to be overly conservative following the evaluation, then perhaps the post-remediation care requirements could be made less burdensome on the remediator and/or the DEP.

Jo Ellen Litz stated that the bigger the institution and the bigger the problem, the more money seems to be available to do the cleanup. Ms. Litz expressed concern that small businesses and individuals that have a problem end up footing most of the bill and end up going out of business. Ms. Litz stated that there are many innocent parties, like herself, who have been affected by a release and may have a difficult time selling their property.

Lastly, Mr. Conrad reported that risk assessment training was recently provided to consultants, corporate managers and DEP staff in the Pittsburgh, Harrisburg and Philadelphia areas. Further, Land Recycling Program workshops are being planned for later summer/fall.

Dawn Heimbach, DEP, presented an update on the **Underground Storage Tank (UST) Pollution Prevention Program**. Since 1998, 1,007 grants have been approved for a total of \$5,149,641.68. For the current state fiscal year 2008-2009, 24 grants have been approved for a total of nearly \$150,000. There is one application pending.

Craig Olewiler, DEP, provided an update on the **UST Environmental Cleanup Program**. DEP is currently addressing 17 state-lead and special projects. With regards to the state-lead and special projects, over \$2.4 million has been budgeted, over \$517,000 has been expended, and over \$1.6 million has been authorized to spend this fiscal year. For the current state fiscal year, 97 Heating Oil Cleanup Program grants have been awarded totaling over \$380,000. There are three applications pending. Concerning the catastrophic release allocation, three projects are being addressed. For the current fiscal year, over \$900,000 has been budgeted, nearly \$270,000 has been expended, and over \$630,000 has been authorized to spend.

The status of the **UST Operator Training Proposed Rulemaking** was the next topic of discussion. Ray Powers, DEP, reported that comments on the proposed rulemaking were received from five corporations, organizations and interested individuals, and the Independent Regulatory Review Commission. All comments received were synopsized into a draft document containing 17 comments that was provided as a handout for the meeting. Mr. Powers went through each of the comments stating how the program intends to respond to the comments. Comment 11, submitted by Bob May, a public member on the STAC, sparked the only real discussion. Mr. May stated that he does not see the advantage of contracting for operator services. Mr. May indicated that there are so many potential problems with a tank owner/third-party contract to include that the contract could be broken, and that the recommendation of the operator will not be followed through by the owner and no one will be penalized. Mr. Powers indicated that allowing an owner to utilize a certified company or individual to serve as a Class A or Class B operator is only one option available to meet the operator training requirements. Further, Mr. Powers stated that the certified entity will have an obligation to comply with the rules and that their certification could be in jeopardy for not complying with the operator requirements. Mr. Powers went on to say that DEP has required tank owners to contract with certified individuals to perform certain facility functions and that the process is working well. Mr. Klapkowski stated that contracting with a DEP-certified entity to serve as an operator arguably strengthens the program. The contractor takes on operator liability and will see that facility compliance is achieved. Mr. Klapkowski indicated that if the contractor identifies a problem that is not addressed by the owner, then they will in all likelihood contact DEP. Walt Rimmer, Tank Installers of Pennsylvania, stated that certified individuals know that they have responsibility and will comply with the requirements even in the case of a contract problem or disagreement. Mr. Powers closed the discussion on Comment 11 by stating that the draft final rule has not been changed and that tank owners will be allowed the option to contract with certified individuals to conduct Class A or Class B duties.

Following the review and discussion of all comments and proposed responses, Mr. Powers reviewed the draft final rulemaking that was provided as a meeting handout. Mr. Powers pointed out each of the changes made to the proposed rulemaking as a result of the comments received. There being no comment or discussion on the draft final rulemaking, there was a **motion** by Dennis Hameister, seconded by Mr. May, **to approve the UST Operator Training draft final rulemaking as written for presentation to the Environmental Quality Board (EQB) as final rulemaking**. There were nine voting members and alternates in attendance constituting a quorum. The **vote on the motion was eight in favor with Mr. May being opposed**. Charlie Swokel stated that the earliest the final regulation would be presented to the EQB is September. Mr. Swokel went on to say that if the regulatory process proceeded smoothly, the final regulation could be published in the Pa. Bulletin as early as November. Mr. Swokel requested that Ms.

Brackin provide a letter to the EQB stating the position that the STAC has taken with regards to the draft final rulemaking. The letter will be included in the final regulatory package. Lastly, as suggested by some STAC members and supported by DEP, DEP will work with individuals, groups or associations to draft training course outlines for the Class A and Class B operators, and written instructions and procedures for the Class C operators. Also, DEP will look to utilize various mechanisms to let tank owners (especially small businesses) know that the UST operator training requirements will soon be in place.

Next on the agenda, **USTIF** provided an **update** on their program activities. Jim Miceli, USTIF Claims Manager, attended from the USTIF. Mr. Miceli stated that he did not have a lot of good news to report. Revenues are down for the year due to a decrease in consumption and also due to a considerably lower return on the USTIF investments. However, over the last month or so throughput fees are up slightly. It was also noted that while USTIF did receive the \$8 million loan repayment last October for the current fiscal year, the majority of the repayment was returned to the General Fund. The one bright spot is that the number of new claims and payments made on claims are down. John Kulik stated that given the continuing gloomy budget situation, it is unrealistic to expect any higher repayment amount than what the Governor has proposed in his budget for the coming fiscal year. Mr. Kulik impressed upon those in attendance that any potential diversion of money out of the USTIF should be communicated with everyone. In addition, those seeking to divert money from the USTIF should be reminded that the diversion of funds could jeopardize the federal funding that DEP receives.

Charlie Swokel reported that EPA recently offered the Commonwealth of Pennsylvania **additional Federal funding** for the current Federal fiscal year (FFY). On the LUST clean-up side, DEP will be receiving an additional \$427,000, bringing the total award for FFY 2009 to \$1,820,000. On the LUST prevention side (UST grant), DEP will be receiving an additional \$670,000, bringing the total award for FFY 2009 to \$970,000. That's an additional \$1.097 million that saves on Storage Tank Fund expenditures, plus the additional LUST clean-up dollars, which reduces the reimbursement request that we make to USTIF for our corrective action costs.

George Hartenstein, DEP, provided information on the **Federal stimulus funding** to be received by Pennsylvania under a LUST Trust Fund grant. Mr. Hartenstein stated that Pennsylvania is to receive approximately \$6,163,000 of the \$200 million being made available nationwide. DEP will apply for the funding when we receive final grant guidance and application materials from EPA. Mr. Hartenstein reported that a number of sites have been identified for use of the money with the focus being abandoned properties with no responsible parties. The hope is that sites can be cleaned up and redeveloped. Mr. Hartenstein stated that a number of access agreements have been worked out with property owners, and that work will be ready to begin once funding is received from EPA.

Ms. Brackin inquired if there was any **old business**. There being none, Ms. Brackin asked if there was any **new business**. There being none, the **meeting was adjourned**, upon motion and second. The next scheduled advisory committee meeting is September 8, 2009.