

**MINUTES OF THE
STORAGE TANK ADVISORY COMMITTEE MEETING
DECEMBER 4, 2012**

The Storage Tank Advisory Committee (STAC) met on December 4, 2012, at the Rachel Carson State Office Building, 400 Market Street, Room 105, Harrisburg. Eleven (11) voting members were present, which constituted a quorum.

Voting members in attendance were:

Local Government:

Jo Ellen Litz, 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 Marketers & Convenience Store Association
Nancy Maricondi, Petroleum Retailers & Auto Repair Association, Inc.
Samuel Capri, Pennsylvania Chemical Industry Council
Stephen Hieber, Tank Installers of Pennsylvania

Public:

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

Hydrogeologist:

Jan Peter Ilves, JPI Associates, Inc.

Non-voting alternates in attendance were:

Holly Fishel, Pennsylvania State Association of Township Supervisors
John Kulik, Pennsylvania Petroleum Marketers & Convenience Store Association
Walter Rimmer, Tank Installers of Pennsylvania

CALL MEETING TO ORDER

John Arnold, Committee Chairperson, called the December 4, 2012, meeting of the STAC to order.

APPROVAL OF MINUTES FROM DECEMBER 6, 2011, MEETING

The minutes from the December 6, 2011, 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 – This seat was last held by the Pennsylvania League of Cities and Municipalities. In August, DEP reached out to the Pennsylvania Municipal Authorities Association to see if their organization was interested in sitting on the STAC. To date, we have received no response.
2. Public member.
3. Active Commercial Farm Owner/Operator – Jim Harbach (Loganton, PA) did not opt to continue as a member. Therefore, Mr. Harbach's term expired on November 30. DEP has requested the Pennsylvania Farm Bureau (which served as an alternate to Mr. Harbach) to search for a new member from the farm community to sit on the STAC.

Mr. Swokel also introduced George Hartenstein as the Director, Bureau of Environmental Cleanup and Brownfields; Noreen Wagner as the Chief, Storage Tanks and Hazardous Sites Cleanup Section; and Susana Cortina as the new Program Counsel.

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, attended representing the USTIF. Mr. Harman stated that the USTIF has seen less than 200 reported claims for each of the last six years. Fewer claims translate into less expense to the USTIF. Mr. Harman indicated that fee revenue has been fairly constant over the last several years at approximately \$60 million per year (\$54 million in throughput fees, \$6 million in capacity fees, and several \$100 thousand in tank installer fees). The actuarial report for the period ending June 30, 2012 was just completed and shows outstanding loss liabilities at \$462 million and USTIF assets at \$224 million resulting in a deficit of \$247 million. The deficit last year was \$269 million and continues to go down each year as fewer claims are reported and the USTIF works to control costs. The actuary projects that only a small fee increase would be necessary to address the deficit, but at the same time projects that the USTIF will have money to pay claims for approximately 16 years (without a fee increase) provided that the general fund loan is repaid in full. On the subject of the general fund loan, Mr. Harman stated that the loan made to the general fund is scheduled to be repaid by June 30, 2014. To date, \$67.5 million in principal and approximately \$14 million in interest has not been paid. Lastly, Mr. Harman stated that for the year ending June 30, 2012, revenue (\$67 million) exceeded disbursements (\$57 million) by \$10 million. Dennis Hameister inquired as to the difference between throughput and

capacity fees. Also, Mr. Hameister asked if the committee should be doing something to advocate the repayment of the general fund loan.

DEP UPDATE

Troy Conrad, Director, DEP **Land Recycling Program**, stated that the program currently has no active rulemakings. However, the program is working with the Cleanup Standards Scientific Advisory Board (CSSAB) to revise the Technical Guidance Manual (TGM). The current version of the TGM is over ten years old. As a result, there are areas of the TGM where the language is out-of-date and clarity is needed. In addition, the program would like to include the series of questions and answers currently available on the web site in the revision to the TGM. Mr. Conrad also stated that the program would like to incorporate the 2004 Vapor Intrusion Guidance (a separate document) into the TGM. Mr. Conrad indicated that a subcommittee of the CSSAB will be providing recommendations and suggestions for revising the TGM in late February. Dave Gallogly asked about the anticipated timeframe for the TGM revisions. Mr. Conrad replied that the goal is to have a draft TGM published for public comment in late 2013. Mr. Gallogly asked if the STAC would have the opportunity to review the TGM prior to the publication in the *Pennsylvania Bulletin*. Mr. Conrad stated that he would review the major revisions to the TGM at a STAC meeting prior to the publication for public comment.

Next on the agenda, Mr. Swokel provided a status on the **proposal to revise the federal underground storage tank (UST) regulations**. EPA is targeting December 2013 for the publication of their final rulemaking. Based on this date, Mr. Swokel stated that DEP would not come to the committee to take action on our proposed rulemaking revisions until mid-2014 at the earliest. Since Pennsylvania has State Program Approval (SPA) from EPA, EPA will not immediately enforce their regulations in Pennsylvania. As stated in the EPA proposed rule, once the EPA regulations are finalized and effective, states will have three years to revise their regulations and apply for a revised SPA. Mr. Swokel stated that DEP requested four years to revise the regulations and apply for a revised SPA in their comments on the proposed rule. Mr. Gallogly asked about the comments that DEP provided on the proposed rule. It was indicated that all comments provided on the proposed rule are in the EPA Docket.

Mr. Swokel then discussed **Project Syllabus and Site-Specific Installation Permits**. This past July, Gov. Corbett signed an Executive Order directing DEP to establish a Permit Review Process and Permit Decision Guarantee Program. As a result, DEP developed a Permit Review Process and Permit Decision Guarantee Policy. The policy was published as final in the *Pennsylvania Bulletin* on November 10 and establishes a standardized review process for permit applications, provides review times for applicants who submit complete, technically adequate applications, and articulates expectations for applicants that result in complete, technically adequate applications.

With respect to the Storage Tank Program, the policy applies to Site-Specific Installation Permit (SSIP) applications. Mr. Swokel stated that the program receives an average of 25 SSIP applications per year. Mr. Swokel stated that a webinar was held with stakeholders on November 28 to discuss how the Permit Review Process and Permit Decision Guarantee Program apply to the storage tank SSIP process. The webinar can be viewed on the DEP web site through the "DEP Webinars" button. Mr. Swokel reviewed the highlights of the information

provided in the webinar with the committee. Mr. Swokel stated that the SSIP application and instructions have been updated, a completeness checklist has been provided to applicants, and a standard operating procedure has been developed for how the DEP performs SSIP reviews. Mr. Swokel emphasized the importance of a pre-application meeting and the use of the completeness checklist. Applications will be reviewed for completeness within 10 business days. Incomplete applications will be denied and the submitted fee will be forfeited. Mr. Hartenstein mentioned that permit applications will now be subject to prioritization based upon certain factors. Mr. Swokel noted that for a complete, technically adequate application, the program has 72 business days to provide a permit decision. It was mentioned that the program would no longer be waiting for permit coordination to make a permit decision. Once an SSIP is issued, tank handling activities may commence, unless other permits are needed. Use of a DEP-certified tank installer and registration of the tanks prior to operation was stressed.

With regards to a permit backlog, Mr. Swokel stated that the program has only five SSIP applications in the queue and that those applications would be addressed during the first half of 2013. Lastly, Mr. Swokel indicated that questions regarding the SSIP application process should be directed to Eric Lingle, Chief, Registration, Permitting & Certification Section.

Steve Hieber expressed that with only 72 business days to render a permit decision, the DEP can't have too much of a pecking order with regards to application prioritization. Mr. Gallogly expressed concern that the new process could lead to DEP identifying technical deficiencies and abuse.

Next on the agenda, Kris Shiffer reported on **Significant Operational Compliance**. Recently, the Division of Storage Tanks transmitted the Federal Fiscal Year (FFY) 2012 LUST Prevention Grant End-of-Year Performance Measures Report to EPA Region 3. DEP reported an overall significant operational compliance rate of 82.5%. These results were based on the results of over 3,000 initial third-party inspections conducted during the prior 12 months. As of the FFY 2012 mid-year, Pennsylvania ranks seventh in terms of highest overall SOC rate of the 56 states and territories. Further, Mr. Shiffer stated that of the nine states with 20,000 or more regulated USTs, Pennsylvania ranks first in overall SOC.

The status of the **UST Operator Training** implementation was the next topic of discussion. The deadline for facility owners to have trained operators was August 8, 2012. To date, DEP has approved 31 vendors to provide Class A and B training. Nine of the approved companies provide training for their own employees or for business affiliates. In addition, three training programs are currently under review. Since, August 9, 2012, DEP has reviewed 624 third-party inspection reports and found that a little over 80% of the facilities are in compliance with the operator training requirements. DEP will continue to provide the "pink flyer" with the operator training requirements information to facility owners. Mr. Hameister asked about local government compliance. Mr. Shiffer stated that compliance with the requirements by local government is currently better than compliance by state agencies. Bob May inquired as to whether the 20% of tank owners in non-compliance were found to have no Class C operator or no operators at all. Mr. Shiffer responded that non-compliant owners typically had no Class A and B operator. Mr. Shiffer went on to say that if a facility is in non-compliance, the tank owner is usually given 30 days to obtain trained operators (if this is the only violation at the facility). Mr. Gallogly inquired if failure to have trained operators is a violation. Mr. Shiffer responded in

the affirmative. Mr. Hameister asked about training certificates being available. Mr. Shiffer indicated that training certificates should be at the facility. Mr. May asked if DEP inspectors are also checking for compliance with the operator training requirements. Mr. Shiffer stated that anytime a DEP inspector is on site, they will check for compliance with all applicable requirements to include operator training.

Next, Mr. Shiffer provided information with regards to **Stage II Vapor Recovery**. In August, EPA issued guidance to states as to how to deal with Stage II Vapor Recovery systems. As follow-up to the EPA guidance, DEP issued a press release stating that enforcement discretion would be applied to gasoline dispensing facilities that would normally be required to have Stage II Vapor Recovery equipment. The press release stated that for facilities that never operated prior to July 31, 2012, no Stage II equipment would be necessary. For facilities that were in operation prior to July 31, 2012, the Stage II equipment must be maintained and tested. Currently, there is a draft press release being considered that would further address existing facilities that must maintain and test the equipment. Mr. Hieber asked if one would still have to re-file their State Implementation Plan if it's decided to decommission Stage II. Mr. Shiffer stated that all requirements are still on the books. If anyone has specific questions regarding Stage II Vapor Recovery, Ron Gray, Chief, Division of Compliance and Enforcement, Bureau of Air Quality, is the contact. Ron can be reached at 717-772-3369.

Mr. Shiffer then discussed the program's **revised field order**. Back in 2006, it was discussed to have a field order so that all regions could use it to quickly address violations at facilities where immediate action was required. In 2007, the original field order was developed and has been in use and available ever since. Recently, the field order was revised to add five violations which are: 1) failure to maintain the containment structure in a leak-free or infiltration-free condition; 2) failure to properly designate a Class A, Class B, and/or Class C operator; 3) failure to properly register each storage tank and to pay the required registration fee; 4) failure to properly maintain financial responsibility; and 5) failure to comply with containment requirements.

Lastly under the DEP Update, Mr. Hartenstein discussed the **USTIB allocation request**. DEP receives four separate allocations from the Underground Storage Tank Indemnification Board (USTIB) to supplement Storage Tank Fund and federal grant revenue. First, the Environmental Cleanup Program allocation provides funding to address state-lead projects and grants to tank owners that have releases from underground heating oil storage tanks 3,000 gallons or less in capacity. The second allocation, known as Pump and Plug, provides grants to tank owners who have non-upgraded tanks to clean the tank, dispose of the contents, and render the tank unusable. The Catastrophic Release allocation allows DEP to address state-lead projects where the release has resulted in significant contamination and cost. Lastly, the Investigation and Closure Costs allocation provides funding to reimburse the DEP for costs incurred in overseeing correction actions conducted by responsible parties.

For the current state fiscal year, DEP received: \$3.2 million under the Environmental Cleanup Program, expending \$905 thousand at 30 sites; authorization to spend prior year funding under the Pump and Plug Program, expending \$15 thousand; \$400 thousand under the Catastrophic Release allocation, expending \$32 thousand at three sites; and \$1.75 million for Investigation and Closure Costs, receiving reimbursement of approximately \$750 thousand for the first quarter

of the fiscal year. Mr. Hartenstein stated that DEP will be requesting allocations from the USTIB next week for state fiscal year 2013.

Mr. Arnold asked the committee if there was any **old business** to discuss. There being none, Mr. Arnold moved on to **new business**.

Under **new business**, the committee **approved the meeting dates for 2013**, which are as follows: March 5, June 11, September 10 and December 3. The committee was informed that next year's meetings will be held in Room 105 and begin at 10:00 a.m.

Also under **new business**, Mr. Hieber asked the DEP to relook at the current certification requirements. At a recent Tank Installers of Pennsylvania Board meeting it was suggested that, for certification renewals, the DEP lessen the number of activities required and years of experience required to one year. Mr. Swokel requested Mr. Hieber to put his proposal in writing and stated that the proposal would certainly be considered and discussed when DEP moves forward with the next set of revisions to the storage tank program rulemaking.

Mr. Gallogly inquired about the EPA report concerning the backlog of releases. The report indicated that Pennsylvania has 3,000 open release cases and contributes to 3.3% of the backlog. Mr. Gallogly asked if DEP has received the report and if DEP was doing anything to reduce the backlog. Mr. Hartenstein stated that DEP voluntarily participated in the backlog study and reviewed and provided comments on the draft of the report. Mr. Hartenstein went on to say that the program has added some wage positions in the regions to assist in alleviating the backlog. Some of the suggestions in the report, such as working with major oil companies through multi-site agreements, came from DEP. In the past, DEP has worked successfully with BP Amoco and Shell-Motiva. Mr. Hartenstein also stated that files continue to be reviewed to assure that the open releases cases are properly categorized and that we continue to work with the USTIF on the older claims. Mr. Gallogly stated that he likes the use of the wage employees to review regional files and believes that many of the old cases can be taken off of the list as a result of such reviews.

The meeting was **adjourned** at 11:38 a.m., upon motion and second.