

**MINUTES OF THE
STORAGE TANK ADVISORY COMMITTEE MEETING
JUNE 8, 2010**

The Storage Tank Advisory Committee (STAC) met on June 8, 2010, at the Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg. Ten (10) voting members were present, which constituted a quorum.

Voting members in attendance were:

Local Government:

Edward Knittel, Pennsylvania State Association of Boroughs
Jo Ellen Litz, County Commissioners Association of Pennsylvania
Dennis Hameister, Pennsylvania State Association of Township Supervisors

Regulated Community:

Judy Brackin, Associated Petroleum Industries of Pennsylvania
Gauttam Patel, Petroleum Retailers & Auto Repair Association, Inc.
Samuel Capri, Pennsylvania Chemical Industry Council
J. Stephen Hieber, Tank Installers of Pennsylvania

Public:

Robert May, Synergy Environmental, Inc.
Timothy Bytner, Babst, Calland, Clements, & Zomnir, P.C.

Registered Professional Engineer:

Mark Onesky, Onesky Engineering, Inc.

Non-voting alternates in attendance were:

Nancy Maricondi, Petroleum Retailers & Auto Repair Association, Inc.
Walter Rimmer, Tank Installers of Pennsylvania
Timothy Donnellon, Donnellon Environmental, LLC (Public)
Michele Cipollone, Registered Professional Engineer

CALL MEETING TO ORDER

Judy Brackin, Committee Vice-Chairperson, called the June 8, 2010, meeting of the STAC to order.

APPROVAL OF MINUTES FROM DECEMBER 8, 2010, MEETING

The minutes from the December 8, 2010, meeting were approved as submitted, upon motion and seconded.

STAC MEMBERSHIP LIST

Before discussing the status of the membership list, Charlie Swokel, DEP, introduced Kris Shiffer, Chief, Aboveground & Underground Tanks Technical Section, and Eric Lingle, Chief Authorizations & Permitting Section. Both individuals assumed their new responsibilities with the Division of Storage Tanks on April 24. Mr. Shiffer and Mr. Lingle were hired to replace Ray Powers and Larry Frey, respectively, both of whom retired in January 2010. Mr. Swokel also reported that Walt Nagel retired on June 4.

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

Appointed to serve a 2-year term through March 31, 2012, is Edward Knittel representing **local government** and the PA State Association of Boroughs (PSAB). Ed is Director of Events & Information Services with PSAB. Chris Cap, who had served as the member, has been appointed as the alternate to Ed.

William McLaughlin has been appointed to serve a 2-year term through February 29, 2012, representing **local government** and the PA League of Cities and Municipalities. This is the first time that the League has served on the STAC. Bill is Council President for the Borough of Chambersburg. Amy Sturges has been appointed to serve as the alternate to Bill. Amy is the Director of Governmental Affairs with the League. All local government positions on the STAC are now filled.

Judy Brackin and Rolf Hanson have been reappointed to serve 2-year terms through May 31, 2012, as the member and alternate member, respectively, representing the **Associated Petroleum Industries of PA (APIP)**. Judy is a Senior Environmental Consultant with Sunoco. Rolf is the Executive Director of APIP.

Appointed to serve a 2-year term through March 31, 2012, is Gauttam Patel representing the **Petroleum Retailers & Auto Repair Association, Inc.** This organization is provided a position on the STAC by statute and serves gas stations and auto repair dealers in western PA. Gauttam owns and operates retail facilities in the Pittsburgh area and serves on the Board of Directors for the Association. Nancy Maricondi has been appointed to serve as the alternate to Gauttam. Nancy is the Executive Director of the Petroleum Retailers & Auto Repair Association, Inc.

Samuel Capri has been appointed to serve a 2-year term through May 31, 2012, as the member representing the **PA Chemical Industry Council (PCIC)**. Sam is the Director of the Inspection Services Department for TTI Environmental, Inc., Moorestown, NJ. Pam Witmer, President of PCIC, has been reappointed to serve as the alternate to Sam. All regulated community positions on the STAC are now filled.

Timothy Bytner has been appointed to serve a 2-year term through December 31, 2011, as a **public member**. Tim is employed by Babst, Calland, Clements, and Zomnir (BCCZ), Pittsburgh. Tim's practice focuses primarily on federal and state environmental regulation and litigation. In addition, Tim handles matters involving storage tank jurisdictional issues and compliance. Emily Lewis has been appointed to serve as the alternate to Tim. Emily is also with BCCZ.

Robert May has been reappointed to serve a 2-year term through June 30, 2012, as a **public member**. Bob is a Senior Engineer with Synergy Environmental, Royersford. Timothy Donnellon has been appointed to serve as Bob's alternate. Tim is Manager of Donnellon Environmental, Lancaster.

Stephen Benes, Hermitage, PA, has resigned as a **public member**. Currently, there are two public member vacancies. 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 Klappkowski, DEP Program Counsel for the Storage Tank Program, provided an update on **Federal/State Legislation**. Mr. Klappkowski reported that all is quiet on the legislation front at both the federal and state levels.

Dawn Heimbach, DEP, presented an update on the **Underground Storage Tank (UST) Pollution Prevention Program**. Since 1998, 1,035 grants have been approved for a total of \$5,321,943.00. For state fiscal year 2009-2010, 19 grants were approved for a total of \$114,390.82. There is one application 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 \$1.1 million. For fiscal year 2009-2010, 127 Heating Oil Cleanup Program grants have been awarded totaling over \$498,000. There are three applications pending. By statute, the maximum amount that can be paid out in a fiscal year is \$500,000. Concerning the catastrophic release allocation, three projects continue to be addressed. For fiscal year 2009-2010, \$204,209 has been expended.

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 70 sites are being addressed utilizing the funding that is available for use through September 30, 2011. Field work has begun on 64 of the 70 sites, with work on the remaining 6 sites to begin within the next month or so. Work on nine sites has been completed. Mr. Hartenstein indicated that work on all sites will likely be completed by the end of calendar year 2010.

By the end of April 2010, EPA set a goal to have 15% of the funding expended and another 35% of the funding obligated. As of the end of April, DEP expended 29% and obligated 100% of the funding. Mr. Hartenstein stated that as of May 14, Pennsylvania had the 6th highest drawdown of funding compared to all other states and territories that received the Stimulus funding. Mr. Hartenstein stated that quarterly reporting on use of the Stimulus funding includes such information as site assessments completed, interim actions completed, cleanups completed, acres made available for reuse, number of wells protected, and jobs created. Lastly, Mr. Hartenstein reported that EPA conducted an audit of the DEP processes and some of the projects being addressed with the Stimulus funding and found no concerns.

Next on the agenda, Mr. Swokel reported on the **USTIB Allocation Requests**. The Underground Storage Tank Indemnification Board (USTIB) voted to approve the DEP allocation requests at their fourth quarter meeting on December 17, 2009. All amounts received should enable DEP to carry out the following programs through June of 2011.

Under the UST Pollution Prevention “Pump and Plug” Program, DEP requested and received a \$75,000 allocation. The “Pump and Plug” program provides grants to encourage small tank owners to remove the environmental threat that unused and unsafe non-upgraded tanks pose to the Commonwealth. Under the UST Environmental Cleanup Program allocation that provides DEP with funding to conduct site investigation and remedial action activities at state-lead sites, and to provide grants to owners of underground heating oil storage tanks, DEP requested and received a \$2.525 million allocation. Included are administrative costs to oversee state-lead projects, and to administer the heating oil grant program. Under the UST Environmental Cleanup Program "Catastrophic Release" allocation that provides funding to address releases that pose a significant risk to human health and the environment, DEP requested and received a \$725,000 allocation. Included are administrative costs to oversee the catastrophic release projects. At the present time, DEP is addressing three release sites with this funding: Blue Bell Gulf, Whitpain Township, Montgomery County; Tranguch Tire, City of Hazleton, Luzerne County; and Lehman Sunoco, Lehman Township, Luzerne County. Lastly, DEP requested and received \$2.025 million to pay for DEP's UST administrative costs relating to corrective action. In total, under all four allocations, DEP requested and received \$5.35 million.

Mr. Swokel then reported on **Significant Operational Compliance**. On April 5, the Division of Storage Tanks transmitted the Federal Fiscal Year (FFY) 2010 LUST Prevention Grant Mid-Year Performance Measures Report to EPA Region 3. National grant goals for FFY 2010 include achieving a 66.5% overall significant operational compliance (SOC) rate with both release prevention (spill, overflow and corrosion) and release detection requirements at UST facilities. SOC is measured by the results of initial third-party inspections conducted during the prior 12 months. During the last year, 3,138 third-party inspections were performed. DEP reported an overall SOC rate of 78.3%, easily exceeding the national goal of 66.5%, and up 2.0% from our overall SOC rate of 76.3% at year-end FFY 2009. Our overall SOC rate exceeds the national (67.6%) and EPA Region 3 state (70%) averages.

The status of the **UST Operator Training Implementation** was the next topic of discussion. Mr. Shiffer reported that the UST Operator Training final rulemaking was published in the *Pennsylvania Bulletin* on December 26, 2009, at which time the rulemaking became effective. Mr. Shiffer stated that the program has drafted operator training guidance and emphasized that

the first deadline regarding UST operator training requirements is fast approaching. The first requirement is that after June 28, 2009, all active regulated underground storage tank facilities must have written instructions or procedures developed and available for persons performing the duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions. Mr. Shiffer stated that all Class A, B and C operators must be designated and trained by August 8, 2012. Class A and B operators must attend a formal training course that is approved by DEP. To date, DEP has approved three vendors to provide Class A and B training. The program has conducted an audit of the first approved vendor. Class C operators do not have to attend formal training, but must be trained by the owner, Class A, or Class B operator as to how to respond to emergencies. In terms of outreach, Mr. Shiffer provided the committee with a copy of an operator training information sheet that is being provided to owners in registration invoice and inspection letter mailings, certified installers and inspectors, and DEP regional staff. In addition, the information will be posted on the storage tank program web site. The facility operations inspection form has also been revised to incorporate the new operator training requirements. Mr. Hameister asked if the emergency procedures are required to be shared with county emergency management agencies. Mr. Shiffer responded that the emergency procedures are for the Class C operator to follow and that there is no requirement that the procedures be provided to the county agencies. Mr. Knittel stated that the PA State Association of Boroughs has notified their membership about the available Class A and B training. Mr. Knittel attended one of the training sessions and learned a lot about the current requirements. In response to some additional questions, Mr. Shiffer indicated that the current cost of Class A and B training is around \$275; failure to be in compliance with the operator training requirements will not impact negatively on a claim filed with the Underground Storage Tank Indemnification Fund (USTIF). In order to be in compliance, owners will need to have a roster of all Class A, B and C operators, training certificates for Class A and B operators, indication that Class C operators have been trained, and emergency procedures for Class C operators to follow.

Next on the agenda, **USTIF** provided an **update** on their program activities. Jim Miceli, Claims Manager, attended representing the USTIF. Mr. Miceli indicated that the USTIF remains in a good position to continue to pay reasonable costs associated with claims. While revenue has been down a little, for example, in the area of throughput fee collection, the number of new claims continues to drop and expenditures on claim payments will likely be about \$6 million less in calendar year 2010 than in calendar year 2009.

Under **old business**, Troy Conrad, Director, DEP Land Recycling Program, reviewed the **proposed Uniform Environmental Covenants Act (UECA) and Chapter 250 rulemakings** with the committee. Mr. Conrad stated that no significant changes are being made to either rulemaking packages as a result of the public comments received. With regards to the Chapter 250 rulemaking, Mr. Conrad briefly reviewed the major revisions that include adoption of EPA's revised Risk Assessment Guidelines for Superfund, adoption of new toxicological information that is utilized to arrive at the statewide health standards, and requirement that a remediator evaluate the vapor intrusion pathway when selecting the statewide health standard. Mr. Conrad stated that comments were received from six commentators. One comment concerned how the revised cleanup standards would be applied to ongoing cleanups. Mr. Conrad stated that the revised standards will become effective upon publication in the *Pennsylvania Bulletin*. Therefore, the revised standards will be applied to all remediation reports reviewed after the date of publication of the rulemaking in the *Pennsylvania Bulletin*. The second issue concerned vapor

intrusion, and the final rulemaking clarifies that vapor intrusion must be evaluated and mitigated, if necessary, when demonstrating attainment of the statewide health standard. Existing DEP guidance or other pertinent guidance may be utilized to evaluate the potential for vapor intrusion. Another concern expressed in the comments received was cost. As a result of the revised cleanup standards, is the remediation going to cost more or less. Since some cleanup standards are going up and some are going down, the DEP estimates that the net increase or decrease in the cost of remediation will be close to zero. The final issue raised during the public comment period concerns the groundwater standard for MTBE not being established in accordance with the governing statute for the Land Recycling Program. Mr. Conrad stated that the DEP is maintaining the current standard for MTBE in the final rulemaking. The 20 ug/l level is being considered as a health advisory level and is necessary to prevent unacceptable taste and odor impacts on groundwater used for drinking water. Timothy Bytner expressed concern about the addition of the word “Assess” in subsections 250.304(h) and 250.305(h) concerning the methodology to demonstrate attainment for the vapor intrusion pathway. The DEP stated that this additional term is not intended to change the current methodology. The DEP will address this concern in the technical guidance dealing with vapor intrusion or in the order to the final rulemaking. As a final comment on the Chapter 250 rulemaking, Ms. Brackin expressed concern that the groundwater standard for MTBE is not being established in accordance with the process established by the statute.

Moving on to the UECA rulemaking, comments were received from eleven commentators on the proposed rulemaking. Commentators requested a definition for “regulated substance” and “eminent domain.” Both definitions were added to the draft final rule. “Regulated substance” is defined in the rulemaking as it is in the statute. “Eminent domain” was added at the request of PennDOT out of concern when acquiring land for highway projects. There was considerable comment and discussion concerning what is mandatory and what is optional in terms of the contents of the environmental covenant. Mr. Conrad stated that the most contentious issue involves self-monitoring and reporting. The DEP may require and has the authority to require property owners to report compliance with the environmental covenant on a prescribed schedule. Mr. Conrad stated that draft guidance concerning periodic reporting would be forthcoming in 6 to 8 weeks. A provision was added to the optional contents section of the rulemaking that provides for termination of the covenant where property has been acquired for use as a Commonwealth highway right-of-way. This was incorporated into the draft final rulemaking to alleviate PennDOT concerns. Mr. May asked why this provision cannot be expanded to apply to all governmental agencies and redevelopment authorities that acquire land for purposes other than highways. Mr. May then raised a concern about Section 253.3(c) of the draft final rulemaking. Under this subsection, Mr. May stated that a person may be granted a waiver from submitting a copy of the covenant to a municipality, and the municipality may not even know that the waiver request had been filed. How does the municipality then become aware that environmental covenants exist on properties within their jurisdiction? Mr. Conrad stated that the on-line environmental covenant registry is the best tool for municipalities to use to track environmental covenants. The section in the proposed rulemaking that received the most attention and comment had to do with the time requirements in which to submit a waiver request or a draft environmental covenant. As a result, the draft final rulemaking has been revised to require the waiver request to be received no later than at the time of submission of the remedial action completion report or the final report. The signed environmental covenant is to be received

by the DEP no later than 30 days after receipt of written approval from the DEP of the remedial action completion report or the final report.

Following the review of comments received and revisions to both proposed rulemakings, Mr. Conrad stated that the comment and response documents should be out in about two weeks. The rulemakings will be discussed with the Cleanup Standards Scientific Advisory Board on June 15 with the hopes of presenting the draft final rulemaking to the Environmental Quality Board on August 17. Under the best of circumstances, both rulemakings would become effective upon publication in the *Pennsylvania Bulletin* in December 2010 or January 2011.

There being no further discussion with regards to the draft final Chapter 250 and UECA rulemakings, a motion to approve the Chapter 250 draft final rulemaking for presentation to the EQB was made by Mr. May and seconded by Mr. Hameister. There were six votes in favor of supporting the rulemaking (Hameister, Bytner, Knittel, May, Heiber and Patel), three opposed (Brackin, Onesky and Litz), and one abstention (Capri). A motion to approve the UECA draft final rulemaking for presentation to the EQB was then made by Mr. May and seconded by Ms. Brackin. There were eight votes in favor of supporting the rulemaking (Hameister, Bytner, Knittel, May, Heiber, Patel, Brackin and Onesky), one opposed (Litz), and one abstention (Capri).

Under **new business**, Ms. Brackin reminded everyone of the **remaining meeting dates for 2010, which are as follows: September 14 and December 7.**

The **meeting was adjourned** at 12:09 p.m., upon motion and second.