

**MINUTES OF THE  
STORAGE TANK ADVISORY COMMITTEE MEETING  
DECEMBER 3, 2013**

The Storage Tank Advisory Committee (STAC) met on December 3, 2013, 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:

Edward Knittel, Pennsylvania State Association of Boroughs  
Lisa Schaefer, County Commissioners Association of Pennsylvania  
Dennis Hameister, Pennsylvania State Association of Township Supervisors

Regulated Community:

Judy Brackin, Associated Petroleum Industries of Pennsylvania  
John Kulik, Pennsylvania Petroleum Association  
Nancy Maricondi, Petroleum Retailers & Auto Repair Association, Inc.  
Scott Nowicki, 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  
Joseph Leighton, Associated Petroleum Industries of Pennsylvania  
Walter Rimmer, Tank Installers of Pennsylvania

**CALL MEETING TO ORDER**

Judy Brackin called the December 3, 2013, meeting of the STAC to order.

## **APPROVAL OF MINUTES FROM JUNE 11, 2013, MEETING**

The minutes from the June 11, 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. Public member
3. Active Commercial Farm Owner/Operator

Mr. Swokel stated that Tyler Courtney, Westmoreland County Commissioner, has been appointed as a member representing local government and the County Commissioners Association of Pennsylvania. Mr. Courtney replaces Jo Ellen Litz.

Mr. Swokel then reported that the following two reappointments were made since the last meeting:

1. Dennis Hameister (member) and Holly Fishel (alternate member) representing local government and the Pennsylvania State Association of Township Supervisors.
2. John Arnold (member) and John Kulik (alternate member) representing the Pennsylvania Petroleum Association.

Lastly, Mr. Swokel stated that the reappointment of Timothy Bytner (member) and Meredith Odato (alternate member) representing the public was in process.

### **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, 2013, totaled \$245 million, as compared to \$224 million at the same time last year. The increase in assets is primarily due to better investment returns. Mr. Harman stated that liabilities as of June 30, 2013, stood at \$441 million, as compared to \$471 million at the same time last year. The \$30 million decrease in liabilities resulted from a drop in the estimated amount needed for unpaid claims. As of June 30, 2013, the USTIF shows an unfunded deficit of \$195 million. The deficit last year was \$247 million, and continues to go down. Mr. Harman reported that the deficit five years ago was \$317 million. With regards to receipts, for the fiscal year ending June 30, 2103, the fund took in \$78 million as

compared to \$67 million for the prior fiscal year. Disbursements for the fiscal year ending June 30, 2013, totaled \$53.7 million as compared to \$57 million for the prior fiscal year. It was noted that net receipts over disbursements for the fiscal year ending June 30, 2013, were \$24.6 million as compared to \$10.8 million for the prior fiscal year. David Gallogly inquired if the annual report is published. Mr. Harman stated that the annual report is posted on the web site upon approval of the USTIB.

Mr. Harman stated that assets as of September 30, 2013, totaled \$250 million, as compared to \$233 million at the same time last year. Liabilities as of September 30, 2013, stood at \$444 million, as compared to \$475 million at the same time last year. As of September 30, 2013, the USTIF shows an unfunded deficit of \$194 million. The deficit at the same time last year was \$241 million.

On the subject of the general fund loan, Mr. Harman stated that the Memorandum of Understanding (MOU) memorializing how the loan made to the general fund is scheduled to be repaid will terminate on June 30, 2014. A new MOU is being drafted which will extend the principal and accrued interest payments until 2029.

Lastly, Mr. Harman reported that the actuary projects the number of years that the fund will have positive cash flow to pay claims. Based on the recent actuarial analysis, positive cash flow was projected to be available until 2031.

Dennis Hameister asked if the recently enacted Transportation Bill would have any impact on the fund. Mr. Harman stated that the actuary utilizes Department of Transportation projections for consumption. If, going forward, gasoline consumption drops as a result of the Transportation legislation, obviously revenue will go down.

## **DEP UPDATE**

Eric Lingle, DEP, discussed **Site-Specific Installation Permits** and the **Permit Decision Guarantee**. Mr. Lingle reported that since the new DEP Permit Review Process (PRP) and Permit Decision Guarantee (PDG) Policy has been in place, 16 Site-Specific Installation Permits have been issued with an average review time of 42 calendar days. Mr. Lingle stated that comments on the PRP and PDG Policy were again recently requested and that the public comment period has ended. Lastly, Mr. Lingle noted that DEP has placed a Permit Application Consultation Tool (PACT) on the web site. PACT is essentially a tool for use by applicants and consultants prior to attending the pre-application meeting. PACT has been designed to guide the applicant to all required permits for a particular project by answering a series of questions.

Kris Shiffer then provided a **Report from the National Tanks Conference**. The 24th National Tanks Conference was recently held in Denver, Colorado. The conference is currently held every 18 months and the cost of attendance for state regulators is reimbursed by the New England Interstate Water Pollution Control Commission. Mr. Shiffer reported that 663 individuals attended the conference including 263 state regulators. Mr. Shiffer stated that the conference is a great opportunity to see how other states are handling underground storage tank issues, network with other attendees, and view exhibits of new technology and products.

The status of the **UST Operator Training** implementation was the next topic of discussion. Mr. Shiffer stated that as of September 30, 2013, DEP reported 81.7% compliance with the UST operator training requirements based upon a review of 3,234 third-party inspection reports. Pennsylvania is one of only a few states that is tracking compliance with this particular requirement. DEP will continue to provide the “pink flyer” with the operator training requirements information to facility owners and will perform further outreach if necessary. To date, DEP has approved 33 vendors to provide Class A and B training. In addition, two training programs are currently under review. Mr. Hameister asked if government entities are included in determining the compliance rate. Mr. Shiffer responded that all facilities for which a third-party inspection report was submitted are included in the compliance rate determination. Bob May asked if DEP had looked at the non-compliance rate in terms of private vs. municipalities vs. public entities. Mr. Shiffer replied that DEP has not looked at the numbers in that level of detail.

Next on the agenda, Mr. Shiffer reported on **Significant Operational Compliance**. Recently, the Division of Storage Tanks transmitted the Federal Fiscal Year (FFY) 2013 Leaking Underground Storage Tank (LUST) Prevention Grant End-of-Year Performance Measures Report to EPA Region 3. DEP reported a significant operational compliance (SOC) rate of 89.0% with release detection requirements, a SOC rate of 92.5% with release prevention requirements, and an overall (compliance with both release detection and release prevention requirements) SOC rate of 82.8%. The overall compliance rate is up 0.6% from that reported at mid-year FFY 2013. EPA has not yet issued the national performance measures report for FFY 2013. Mr. Shiffer explained the calculation of the overall SOC rate to the committee upon being questioned by Steve Hieber. Mr. Hameister inquired as to the type of facilities that are included in the 18% that are non-compliant. Mr. Shiffer stated that it is a mixture of facility types. Mr. Shiffer indicated that DEP has yet to determine the primary reason for failure to comply among the non-compliant facilities. Mr. Hameister expressed concern that local government facilities are among the group in non-compliance. Mr. Shiffer stated that DEP can take a further look at the type of facilities in non-compliance and the reasons for non-compliance. George Hartenstein noted that DEP will be attending the Pennsylvania State Association of Township Supervisors conference in the spring to discuss compliance issues with underground storage tank facilities.

Mr. Shiffer then discussed the **summary of comments** on the **Draft Technical Guidance Document “Storage Tank Modification and Maintenance Issues, 263-0900-01.”** Mr. Shiffer stated that the public comment period has ended and that 17 comments from seven commentators were received. Some commentators pointed out that outdated terminology is being used. Mr. Shiffer stated that the terminology will be changed in the final guidance. Some commentators argued that certain activities could be performed by trained technicians as opposed to certified individuals. Other commentators expressed views that would have to be considered in the next regulatory revision and could not be addressed in the guidance. Mr. Shiffer stated that all comments will be considered in preparing the final guidance. Mr. Hieber asked if DEP would be providing responses to the comments. Mr. Shiffer responded that a comment and response document will be prepared with the final guidance being issued in the first quarter of 2014. Mr. Gallogly inquired as to the status of the EPA regulations. Mr. Shiffer stated that the final regulations are scheduled to be published in the spring of 2014.

Lastly under the DEP update, Troy Conrad, DEP, **Land Recycling Program**, provided the status of the revisions to the Chapter 250 regulations. These regulations were last revised in January

2011, and the program is required by regulation to propose any necessary revisions to the rulemaking every three years. Mr. Conrad stated that the body weight exposure assumption used to develop the cleanup standards is changing from 70 kg to 80 kg as recommended by the EPA. The result is that many cleanup standards will become slightly higher or less restrictive. With regards to the petroleum short list used primarily by the storage tank program, five of the parameters will have slightly higher or less restrictive soil and ground water cleanup standards. The parameters are: trimethyl benzene, fluorene, benzo[a]anthracene, indeno[1,2,3-cd]pyrene, and benzo[b]fluoranthene. Mr. Conrad stated that the draft rulemaking was discussed with the Cleanup Standards Scientific Advisory Board (CSSAB) last month. Based on those discussions, the CSSAB provided a letter supporting the rulemaking. Mr. Conrad stated that the goal is to present the proposed rulemaking to the Environmental Quality Board in January 2014 with the hope of finalizing the rulemaking in mid to late summer 2014. Ms. Brackin asked if the CSSAB had any specific comments even though they provided a letter of support for the rulemaking. Mr. Conrad responded that the CSSAB did have a concern that the groundwater standard for MtBE was being handled differently than other cleanup standards.

At this point in the meeting, Mr. Hartenstein introduced Chris Abruzzo, Acting Secretary of DEP, and Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation. All committee members introduced themselves to the Acting Secretary and Deputy Secretary. Acting Secretary Abruzzo addressed the committee and thanked all of the members for their service and continuing work to address storage tank program issues. Acting Secretary Abruzzo stressed the value of relationships between the Department and advisory committees.

Mr. Conrad then concluded the presentation on the Chapter 250 rulemaking by mentioning a few proposed revisions not applicable to storage tank cleanups. These proposed revisions pertain to: waiver of fees when reports are resubmitted with minor changes, the method of calculating the cleanup standard for TCE, and notification requirements. Ms. Brackin asked what the cleanup standard would be for MtBE if it was calculated like the other standards. Mr. Conrad responded the current standard is 20 ug/l. That number is based on the EPA drinking water advisory. If calculated like the other standards, Mr. Conrad stated that the residential standard would be about 190 ug/l, with the non-residential standard being in the 960-970 ug/l range. Ms. Brackin then asked for clarification as to the basis of the EPA 20 ug/l value. Mr. Conrad stated that MtBE is unique in that EPA issued a draft Health Advisory Level (HAL) for MtBE of 20 ug/l. The draft HAL was never finalized and the number (20 ug/l) then became a drinking water advisory. Mr. Conrad stated that the advisory is used in publications as a HAL and the DEP is retaining this number in the interest of protecting the public. Jan Peter Ilves asked again about the five petroleum short list parameters being affected by this rulemaking. Mr. Conrad stated the parameters are: trimethyl benzene, fluorene, benzo[a]anthracene, indeno[1,2,3-cd]pyrene, and benzo[b]fluoranthene.

Mr. Conrad also indicated that the Technical Guidance Manual (TGM) is in the process of being updated. At the present time, the program is looking at recommendations provided by the CSSAB in May of 2013 and will be preparing another draft for issuance in 2014. Mr. Conrad also stated that the program is revising the Vapor Intrusion Guidance. EPA recently published two Vapor Intrusion Guidance documents for public comment. DEP intends to incorporate elements from the EPA guidance that make sense. The plan is to incorporate the Vapor Intrusion Guidance (currently a separate document) into the TGM. Mr. Gallogly asked the date of the

rollout of the TGM. Mr. Conrad responded that the next draft of the TGM is targeted for mid-2014.

Ms. Brackin asked the committee if there was any **old business** to discuss. Mr. Hieber asked for an update on Stage II vapor recovery and if it has been addressed in the State Implementation Plan. Mr. Shiffer stated that he will check with the Bureau of Air Quality and an update will be provided to all members following the meeting. Mr. Gallogly asked if the position of the DEP has changed. Mr. Shiffer responded that the position with regards to enforcement discretion has not changed. John Kulik emphasized the importance of the Stage II issue as other states in the region are moving ahead with decommissioning of stage II vapor recovery systems.

Under **new business**, the **Committee Recommendation to Present the Chapter 250 Revisions to the Environmental Quality Board as Proposed Rulemaking** was discussed. Ms. Brackin expressed concern that the DEP is not following the scientific basis to set the limits for MtBE. Mr. Hieber stated it makes sense that the DEP has adopted the EPA recommendation. Ms. Brackin responded that the EPA recommendation is based on drinking water taste and odor and is not health based. Ms. Brackin stated that the limits for MtBE are being treated differently than other constituents. Mr. Hartenstein clarified that it is the DEP's position not to change the current value of 20 ug/l for MtBE until EPA finalizes its position on the contaminant. MtBE is to be evaluated by EPA for a Maximum Contaminant Level. Mr. Bytner stated that EPA changed its position from a draft HAL to a drinking water advisory, yet the DEP did not change its position and is keeping the number at 20 ug/l. Mr. Bytner asked why. Mr. Hartenstein reiterated the current policy decision that DEP has made with regards to this issue. Mr. Gallogly expressed the significance of the issue. Mr. Gallogly stated that he believes the DEP may be on shaky ground from a legal standpoint with its current position. However, if the levels were to go up, more sites would certainly be closed which would be good from an industry standpoint, but perhaps would be a health and environmental issue. Mr. Gallogly suggested that it may be best to follow the lead of the CSSAB. Ms. Brackin stated that the committee did just that on the prior Chapter 250 rulemaking, approving the rulemaking with the exception of how the groundwater standard for MtBE was established. Mr. May made a motion, seconded by Mr. Ilves to approve the Chapter 250 draft proposed rulemaking as written for presentation to the EQB as proposed rulemaking, with the exception of the proposed MtBE value in Table 1, Appendix A. The committee did not support using EPA's drinking water advisory as the groundwater MSC for MtBE. The MSC should have been calculated using specific health-based criteria. With a quorum present, all 12 members voted in favor of the motion. Mr. Swokel requested Ms. Brackin to provide a letter to the EQB by the end of the week stating the committee's position with regards to the draft Chapter 250 rulemaking.

Ms. Brackin noted that the proposed **meeting dates for 2014** are as follows: March 4, June 3, September 9 and December 2. The meeting dates for 2014 were approved upon motion and seconded.

Mr. Gallogly inquired about election of officers. Mr. Swokel stated that elections are held every two years or so with the process set forth in the committee by-laws. Mr. Swokel stated that election of officers would be taken up next year.

The meeting was **adjourned** at 11:20 a.m., upon motion and seconded.