

**MINUTES OF THE  
STORAGE TANK ADVISORY COMMITTEE MEETING  
JUNE 11, 2013**

The Storage Tank Advisory Committee (STAC) met on June 11, 2013, 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:

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

Registered Professional Engineer:

Francis Catherine, Northwind Engineering, LLC

Hydrogeologist:

Jan Peter Ilves, JPI Associates, Inc.

Non-voting alternates in attendance were:

Walter Rimmer, Tank Installers of Pennsylvania  
Mark Miller, Moody and Associates, Inc.

**CALL MEETING TO ORDER**

John Kulik called the June 11, 2013, meeting of the STAC to order.

## **APPROVAL OF MINUTES FROM DECEMBER 4, 2012, MEETING**

The minutes from the December 4, 2012, 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 Kevin Tobias, Manager, Wyomissing Borough, has been appointed as a member representing local government. Mr. Swokel then introduced Scott Nowicki, Manager of Inspection Services, TTI Environmental Inc., Moorestown, NJ, as a new member representing the Pennsylvania Chemical Industry Council. Mr. Nowicki replaces Sam Capri. Mark Miller, P.G., Senior Geologist, Moody and Associates, Inc., Meadville, was also introduced as a new alternate member representing the Hydrogeologists. Mr. Miller replaces William Minnick.

### **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 revenue collected through March 31, 2013 (for the first nine months of the state fiscal year that began July 1, 2012) amounted to \$65 million, with claim payments totaling \$32 million for the same period. As of March 31, 2013, the USTIF shows outstanding loss liabilities at \$462 million and assets at \$246 million resulting in a deficit of \$225 million. The deficit last year was \$257 million and continues to go down. Jo Ellen Litz inquired if the actuary establishes an asset/liability ratio at which the fund is determined adequate to pay expenses. Mr. Harman responded that the actuary projects the number of years that the fund will have positive cash flow to pay claims. Based on the last actuarial report, positive cash flow was projected to be available for 11 or 12 years.

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 accrued interest has not been paid. There is no repayment included in the proposed budget for next fiscal year and it is fully anticipated that a restructuring of the loan agreement will be necessary.

Next, Mr. Harman reported that they are working on an RFP (Request for Proposal) for third-party administration services. The current provider of these services is ICF. The RFP is expected to be issued in late summer and will include an expansion in scope to include fee

billing and collection. The new fee billing and collection system, once in place, will require more detailed information from distributors that will aid in claims processing. Mr. Harman also stated that they have worked to speed up the payment cycle for bills they pay on behalf of claimants. The current cycle is 30 to 35 days, and the new cycle to be effective in the near future will be 15 days. Lastly, Mr. Harman indicated that the USTIB is considering a modest fee increase in the neighborhood of 9% that will be further discussed at the June USTIB meeting. J. P. Ilves asked about the current claim trend. Mr. Harman stated that the number of claims is currently steady and has been under 200 for a number of years now. Susana Cortina inquired as to when the last fee increase occurred. Mr. Harman responded in 2003 or 2004.

## **DEP UPDATE**

Troy Conrad, DEP, **Land Recycling Program**, stated that the program currently is working on 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. Therefore, the program has a deadline of January 2014 to present a proposed rulemaking to the Environmental Quality Board. Mr. Conrad stated that the draft rulemaking was discussed with the Cleanup Standards Scientific Advisory Board (CSSAB) on May 7. Based on those discussions, the CSSAB provided comments with regards to the groundwater standard for MtBE remaining at 20 ug/l, the appropriateness of the body weight exposure assumptions used to develop the cleanup standards, and the interpretation of the health advisory levels for carcinogenic contaminants such as 1,4-dioxane.

Mr. Conrad also indicated that the Technical Guidance Manual (TGM) is being reviewed and updated. The TGM was published in 2002 and there are interface issues that are in need of revision and other more contemporary issues (e.g. environmental covenants) that need to be addressed. 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 is reviewing and updating the Vapor Intrusion Guidance with detailed suggestions being provided by the CSSAB. The Vapor Intrusion Guidance was published in 2004. Also, EPA recently published two Vapor Intrusion Guidances for public comment. The first guidance is applicable to petroleum releases, and the other guidance deals with volatile chemicals. DEP is reviewing and will be providing comments on both EPA guidance documents. In addition, the EPA guidance will be taken into consideration in revising the current DEP Vapor Intrusion Guidance. The goal is to develop a revised guidance based on good science, with an approach that is practical, cost-effective, and protective. Lastly, the plan is to incorporate the 2004 Vapor Intrusion Guidance (a separate document) into the TGM.

As a final item under the Land Recycling Program update, Mr. Conrad indicated that the deadline has passed concerning the conversion of prior instruments to an environmental covenant under the Uniform Environmental Covenants Act (UECA). There have been minimal inquiries about the conversion process, and the program has taken the position of granting waivers until the property is transferred to someone else. Ms. Litz asked if the environmental covenants apply to municipalities that own land with fuel tanks. Mr. Conrad replied that an environmental covenant is required for any site where a use limitation is utilized as part of the cleanup. Ms. Litz followed up by inquiring if the DEP has discussed the UECA with the County Commissioners Association or Township Supervisors Association. Ms. Litz stated that the

statute has been in effect for five years and she believes that many counties know nothing about the UECA. Mr. Conrad responded that the program would be willing to speak with any organization with an interest and need to understand the UECA. Dave Gallogly reiterated Ms. Litz's concern that many facilities and property owners may simply not be aware of the conversion requirement. Mr. Conrad stated that the program has done a tremendous amount of outreach since the passage of the UECA through attendance and participation at a number of conferences and symposiums. However, Mr. Conrad indicated that additional outreach can be considered. Mr. Gallogly inquired as to the program's awareness of sites with conversion obligations and plans for any enforcement action. Mr. Conrad stated that the program does not have a readily available record of sites with conversion obligations. Mr. Ilves asked if a covenant is required for site-specific groundwater cleanups. Mr. Conrad responded that the covenant is not standard specific, but rather required where a cleanup employs a use limitation. Timothy Bytner noted that with regards to the Chapter 250 revisions, there are a lot of changes to a lot of constituents. Mr. Conrad agreed, but noted that the number is much smaller when compared with the prior rulemaking. Mr. Conrad stated that the majority of the revisions are the result of new toxicological information.

Eric Lingle, DEP, then discussed **Site-Specific Installation Permits** and the **Permit Decision Guarantee**. Mr. Lingle briefly reviewed how Site-Specific Installation Permit (SSIP) applications are handled under the new DEP Permit Review Process (PRP) and Permit Decision Guarantee (PDG) Policy. The policy 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.

Mr. Lingle stated that the program receives between 20 and 25 SSIP applications per year. Applications will be reviewed for completeness within 10 business days. Incomplete applications will be denied and the submitted fee will be forfeited. Mr. Lingle 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. Mr. Lingle emphasized the importance of a pre-application meeting and communication with DEP in the development of the permit application. Mr. Lingle noted that incomplete applications are still being received.

With regards to a permit backlog, Mr. Lingle stated that the program has reduced the number of SSIP applications in the queue from six to one. The one remaining application is currently under review. Lastly, Mr. Lingle stated that the PRP and PDG Policy does not apply to the processing of registration forms and certification applications. However, the program is utilizing processes for these authorizations similar to the process for handling SSIP applications. This is being done to hold tank owners and applicants more accountable for their submissions and to improve efficiency.

Next on the agenda, Kris Shiffer reported on **Significant Operational Compliance**. In April, the Division of Storage Tanks transmitted the Federal Fiscal Year (FFY) 2013 Leaking Underground Storage Tank (LUST) Prevention Grant Mid-Year Performance Measures Report to EPA Region 3. DEP reported a significant operational compliance (SOC) rate of 88.4% with

release detection requirements, a SOC rate of 92.4% with release prevention requirements, and an overall (compliance with both release detection and release prevention requirements) SOC rate of 82.2%. These results were based on the results of 2,929 initial third-party inspection reports reviewed during the prior 12 months (April 1, 2012 through March 31, 2013). Mr. Shiffer stated that of the nine states with 20,000 or more regulated underground storage tanks (USTs), Pennsylvania (which regulates approximately 23,000 USTs) ranks second behind only Texas in overall SOC.

Mr. Shiffer then provided a status on the **proposal to revise the federal UST regulations**. EPA is still targeting November/December 2013 for the publication of their final rulemaking. EPA has been silent on the revisions they have made to the proposed rule. Mr. Gallogy asked if Pennsylvania would then have a year to get their regulations in place. Mr. Shiffer responded that since Pennsylvania has State Program Approval 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. Mr. Shiffer stated that DEP requested four years to revise the regulations in their comments on the proposed rule.

The status of the **UST Operator Training** implementation was the next topic of discussion. To date, DEP has approved 34 vendors to provide Class A and B training. In addition, one training program is currently under review. Last December, DEP reported 80.4% compliance with the UST operator training requirements based upon a review of third-party inspection reports. Currently, 81.6% 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 and will perform further outreach if necessary. Dennis Hameister asked if any municipal government had an approved training program. Mr. Shiffer responded that no municipal government had submitted an application. Mr. Hameister inquired as to what companies do their own training. Mr. Shiffer stated that nine of the 34 approved companies provide training for their own employees or for business affiliates. Those companies that provide training for their own employees include Wawa, Ewing Oil, and Carroll Independent Fuels.

Lastly under the DEP Update, George Hartenstein, DEP, discussed the **USTIB allocation requests and federal funding**. At the December 2012 USTIB meeting, DEP requested and the USTIB approved four separate allocations from the USTIF for the state fiscal year that begins July 1, 2013. First, under the Environmental Cleanup Program allocation that 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, DEP received \$2.5 million. The Catastrophic Release allocation allows DEP to address state-lead projects where the release has resulted in significant contamination and cost. DEP received \$250,000 under this allocation. Third, DEP received \$2.9 million under the Investigation and Closure Costs allocation that provides funding to reimburse the DEP for costs incurred in overseeing corrective actions conducted by responsible parties. Lastly, the DEP did not request funding under the allocation known as Pump and Plug. This allocation provides grants to tank owners who have non-upgraded tanks to clean the tank, dispose of the contents, and render the tank unusable. However, DEP did request and receive approval to expend unspent allocation amounts from prior fiscal years.

With regards to federal funding, Mr. Hartenstein reported that DEP receives two grants that are funded with federal LUST Trust Fund dollars. One grant funds cleanup activities, while the other grant supports the pollution prevention activities of the Storage Tank Program. Between the two grants, the program receives approximately \$2.5 million per year. However, for the current federal fiscal year that ends in September 2013, EPA has advised DEP to expect a 3.6% cut in the cleanup grant and a 6.4% cut in the operations grant due to the federal sequestration. As a result, DEP will likely receive \$2.4 million as opposed to the expected \$2.5 million, an approximate \$100 thousand or 4.4% overall reduction. For the federal fiscal year beginning October 1, 2013, and for future years, EPA has advised DEP to plan on receiving a total of \$2.4 million in federal funding to support the program.

Mr. Hartenstein also addressed the Storage Tank Fund situation. The Storage Tank Fund, together with federal funding and the USTIF allocations, support the Storage Tank Program. Currently, the Storage Tank Fund receives revenue on the order of \$6.5 million per year, with expenditures for the current state fiscal year expected to come in at about \$7.7 million. Obviously, for the current fiscal year, the program will spend more than it is taking in. As a result, the Storage Tank Fund has been placed on a watch list by DEP's fiscal office, meaning that the fund may not have long-term sustainability. At the present time, the fund has a balance of \$10 million, and revenue and expenditures will be monitored very closely in the coming fiscal year. In addition, special funds (like the Storage Tank Fund) are being requested to pay more in indirect costs that were previously covered by the state General Fund. As a result, this is driving program costs higher. Mr. Hartenstein stated that additional revenue is not being sought at the present time. Ms. Litz asked what percentage of the budget accounts for pension costs. Mr. Hartenstein was not able to provide a percentage, but noted that personnel costs make up the majority of the budget. Ms. Litz inquired, if the economy picks up and investment income results in excess funding, does the money stay in the Storage Tank Fund or does it go to the General Fund? If it stays in the Storage Tank Fund, can fees be cut? Mr. Hartenstein responded that the money stays in the Storage Tank Fund and that a fee cut can be considered. Ms. Litz commented that it may be healthy to have some debt considering the fact that some funds with large balances have been raided. Mr. Gallogy asked if the tank program is different than any other program in DEP, meaning the program won't dry up and funding will come from somewhere to continue to operate. Mr. Hartenstein stated that the Storage Tank Program is not different. In order for the program to continue to operate, additional revenue will need to be provided, and possibly cuts in the program will need to be made.

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

Under **new business**, Mr. Shiffer discussed the **substantive revisions** to the **Technical Guidance Document "Storage Tank Modification and Maintenance Issues, 263-0900-01."** Mr. Shiffer explained that this document, first issued in 2005, primarily assists certified individuals in determining what is a modification activity and what is a maintenance activity.

Mr. Shiffer explained that the Definitions section in the document was revised to be consistent with the regulatory language and reordered alphabetically. In addition, language for purposes of clarity was added to several definitions and terms defined by regulation were added (e.g. Emergency Containment). With regards to the Technical Guidance section of the document,

regulatory text was added for additional guidance on tank handling activity, conflict of interest, under dispenser containment, and report submission deadlines. In addition, diagrams were repositioned to where they are actually discussed and several recommended practice documents are now mentioned. In the General section, some of the minor changes included repositioning of existing text, adding the definitions for major and minor modification, providing additional language to existing examples to aid in clarity, and deleting outdated terminology or terms that created confusion.

Mr. Shiffer then covered specific examples of activities added or updated to the Major Modification Activities for aboveground storage tanks (ASTs) and USTs. Bob May stated there are new techniques being utilized that are less invasive as compared to drilling and asked if that would be considered a hand excavation and thus a minor modification. Mr. Shiffer stated that the guidance cannot address every scenario and requested that DEP be contacted for a determination.

Mr. Shiffer then went on to cover specific examples of activities added or updated to the Minor Modification Activities for ASTs and USTs. Steve Hieber commented that the proposal to require certified installers to install automatic tank gauge (ATG) consoles makes no sense. Service technicians and electricians are factory trained to perform this activity. Mr. Hieber stated that this proposal would require that his service technicians go through certification. Mr. Shiffer responded that the program has seen a lot of problems associated with ATG replacement. By calling ATG replacement a minor modification, the program receives a report from the certified individual. In this way, DEP knows who did the work and when, and can follow up if a problem develops. If ATG replacement is a maintenance activity, anyone can do it and the program receives no report. Mr. Hieber stated that DEP needs to know about the activity and suggested that the modification report be provided by a certified UMX or that the individual who did the work provide proof of factory training. Mr. Shiffer indicated that requiring an individual to provide proof of factory training may not be enforceable.

Mr. Shiffer stated that the guidance should be published for public comment in the *Pennsylvania Bulletin* by the end of next month with a 30-day comment period. Comments made today will be considered prior to publication, and Mr. Shiffer encouraged committee members to provide comments on the guidance when published. Mr. Bytner expressed concern that the addition of language to definitions (specifically Major Modification and Minor Modification) in the guidance appears to be stretching existing regulation to cover other scenarios. Mr. Bytner stressed that guidance is not the right venue to add definitions and could create problems for the program. Mr. Shiffer responded that the language added for clarification in both the Major and Minor Modification definitions is for the benefit of the certified individual. The language clarifies for the certified individual what is a major modification and what is a minor modification. In this way, the certified individual understands also if they will be billed by the USTIF for an activity fee.

Mr. Shiffer concluded the discussion of the Modification and Maintenance Issues guidance by covering several examples of activities added or updated to the Maintenance Activities for USTs.

Mr. Hieber asked if the committee would be notified when the guidance is published for public comment. Mr. Shiffer responded that the program would notify the committee members and also certified individuals.

Lastly under **new business**, Mr. Kulik noted the **remaining meeting dates for 2013** are as follows: September 10 and December 3.

The meeting was **adjourned** at 11:53 a.m., upon motion and second.