



**DEPARTMENT OF FORESTRY AND FIRE PROTECTION
OFFICE OF THE STATE FIRE MARSHAL**

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**Office of the State Fire Marshal
Aboveground Petroleum Storage Act Advisory Committee**

DRAFT

Meeting Date: July 11, 2013

Meeting Time: 1300-1630

Meeting Location: Air Resources Board, First Floor Main Conference Room
1927 13th Street, Sacramento, CA 95811

Staff Present:

James Parsegian, Supervising Deputy State Fire Marshal
Jennifer Lorenzo, Staff Environmental Scientist, Chair
Denise Gibson, Staff Environmental Scientist

Members Present:

Jason Boetzer,* Calaveras County Environmental Health
Mike Vizzier,* Co-chair, San Diego County Environmental Health
Vince Mendes,* Fresno County Environmental Health
Randy Sawyer,* Co-chair, Contra Costa County Hazardous Materials Division
Philip Gairson,* Southern California Fire Prevention Officers
Jay McKeeman, California Independent Oil Marketers Association (CIOMA)
Todd Tamura, Tamura Environmental, Inc. (Consultant to WSPA)
Armand Delgado,* Verizon Wireless
Michelle Le,* Pacific Gas & Electric (PG&E)
John Denholm,* Oil Changer, Inc.
Andrea Fox,* California Farm Bureau Federation
Mike Huber, Department of the Navy
Stuart Strum,* Defense Logistics Agency
Rich Erickson,* Donlee Pump Company
David Harris,* Donlee Pump Company
Craig Fletcher, Fletcher Consultants, Inc.
Cory Hootman* for Laura Fisher, State Water Resources Control Board (SWRCB)
Lou Dinkler, Air Resources Board (ARB)
Joyce Jaszarowski, Division of Oil, Gas, and Geothermal Resources (DOGGR)
Janice Witul,* U.S. Environmental Protection Agency (US EPA)
Wayne Geyer,* Steel Tank Institute (STI)
Stephen Crimauado,* American Petroleum Institute (API)

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Members Absent:

Jason Rizzi, Northern California Fire Prevention Officers
Patty Senecal, Western States Petroleum Association (WSPA)
John Paine, California Environmental Protection Agency (Cal/EPA)
Peter Reich, US EPA
Raymond Bizal, National Fire Protection Association (NFPA)

Guests Present:

Gary Reeves, Lowry Oil
Christina Graulua,* Department of the Navy
Johnathan Morrison,* California New Car Dealers Association
Hao Nguyen,* California New Car Dealers Association
Dana Schmidt,* STI
Sande Pence,* San Diego County Environmental Health
Mark Landin,* Southern California Edison

* *Via Conference Call*

I. Call to Order

Committee Chair Jennifer Lorenzo called the meeting to order at 1:04 p.m. and welcomed everyone to the meeting.

II. Roll Call and Introductions

Denise Gibson conducted the roll call. Attendees and guests introduced themselves.

III. Approval of Minutes

Minutes from April 9, 2013, were reviewed. Jennifer Lorenzo added an additional guest to the list of attendees. Jay McKeeman and Joyce Jaszarowski requested to amend the minutes. Jay McKeeman motioned to accept the minutes from April 9, 2013, as amended and Mike Huber seconded the motion. All members were in favor and none opposed.

IV. Old Business

A. Overview of APSA

APSA was originally enacted in 1989 as a result of Senate Bill (SB) 1050 (Statutes of 1989, Chapter 1383), authored by Senator Torres. At the time, the legislature was aware of at least 65,000 or more aboveground storage tanks (ASTs) in the state. The tanks were found to leak and spill into the ground and in water, such as the 1988 spill in Martinez, CA, which was estimated to be 400,000 gallons of crude oil into the marshes in Suisun Bay and the Bay Delta Estuary. Leaks and spills were due to various factors: age, defects in design and installation, human error and equipment failure. While there was a statewide program for hazardous materials stored in underground storage tanks, there was none for above ground storage tanks. The federal government traditionally monitored ASTs, but the legislature felt they were experiencing severe budget and personnel shortage devoted to the function of inspecting ASTs. SWRCB and the Regional Water Quality Control Boards (RWQCBs) were originally in charge of administering this program. Due to the budget

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crisis in 2002-2003, the SWRCB's resources for the program were eliminated; all inspection and enforcement activities stopped. The Certified Unified Program Agency's (CUPA's) roles under the original law and during the course of conducting Unified Program inspections was to determine whether a tank facility prepared a Spill, Prevention, Control and Countermeasure (SPCC) plan and to refer noncompliance to the RWQCBs. Since 1989, a few other bills amended the law. Most notable bills were Assembly Bill (AB) 1130 (Stats. 2007, Ch. 626, Laird) and AB 1566 (Stats. 2012, Ch. 532, Wieckowski). AB 1130 transferred the authority to implement the program to Unified Program Agencies, provided no state oversight, and allocated funds from the Environmental Protection Trust Fund (EPTF) to the CUPAs for their initial implementation of the program and set aside money from the EPTF to develop a training program for CUPAs. AB 1566 delegated OSFM with the oversight responsibility of the program, required an advisory committee to be established and develop regulations, and updated definitions, such as tanks in underground areas.

Under the original law, a tank facility is subject to APSA if it met the Code of Federal Regulations (CFR) Title 40, Part 112 – federal SPCC rule requirements for oil pollution prevention – or a tank facility had a storage capacity of 10,000 gallons or more of crude oil or its fractions. Under the current law, a tank facility is regulated under APSA if it is subject to the oil pollution prevention regulations in CFR Title 40, Part 112 or the tank facility has a storage capacity of 1,320 gallons or more of petroleum.

B. CUPA Implementation of APSA

Mike Vizzier and Randy Sawyer provided a summary of the CUPA's implementation of the APSA program. While the EPTF provided money to the CUPAs for their initial implementation of the program, the EPTF also provided money to support the training program developed by Cal/EPA in coordination with CSTI. Three-day training sessions on APSA were conducted throughout the state in 2009; over 600 CUPA inspectors were trained.

Since there was no state oversight of the program, the APSA Working Group was also established, which was chaired by Randy Sawyer and Mike Vizzier. CUPAs received technical assistance from US EPA Region 9. The group used US EPA's inspection checklist and SPCC Guidance for Regional Inspectors. The APSA Working Group developed a violation checklist with violation classes based on US EPA's bulk expedited penalty checklist, which was eventually incorporated into Cal/EPA's data dictionary. Other CUPA's also developed inspection checklists for their own use based on US EPA's facility inspection checklist. Additionally, the APSA Working Group developed the APSA Frequently Asked Questions (FAQ) document, which was not legally reviewed since there was no state oversight and currently contains some incorrect information, but served as guidance for the CUPA's initial implementation of the program and to provide some consistency.

Jay McKeeman inquired if the checklist may be available to allow for the regulated community to comment on it and ask questions. Mike Vizzier will provide a link to Cal/EPA's violation dictionary, which includes the APSA violations checklist. The Committee Chair will provide a link to other CUPA's inspection checklists. The committee members all agreed that a standardized inspection checklist is essential for consistency.

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Other training classes were provided annually at the annual CUPA training conference. San Diego County CUPA also developed an online training program modeled after the 2009 three-day training sessions for the CUPAs so that new inspectors may be able to conduct compliance inspections.

Most CUPAs are now conducting compliance inspections. However, the first round of inspections was focused on outreach and consultations. CUPAs did not take formal enforcement actions during the initial implementation of the program.

C. Workgroup Update

1. Surcharge

The surcharge workgroup met twice and made a decision on the surcharge rate.

Jay McKeeman provided the details of the workgroup's decision on the surcharge rate. A \$26 flat surcharge rate for each regulated AST facility was determined based on the budgetary needs of the OSFM for oversight of the program. Alternatives were discussed. However, this rate was the most accommodating to all regulated AST facilities than determining what "size" facility would pay more or less. The flat fee per regulated facility will provide the necessary funds and ease of application and administration by the OSFM.

Jay McKeeman motioned to approve the \$26 flat surcharge rate per regulated AST facility. Andrea Fox seconded the motion. The committee members voted unanimously and approved the surcharge rate of \$26 for each regulated AST facility.

The surcharge is expected to be collected in the next fiscal year cycle (2014-2015), not during the current fiscal year. The justification language for the surcharge has yet to be developed and approved for inclusion in the Title 27 of the California Code of Regulations. The new surcharge must still go through the rulemaking process.

2. Regulations

The regulations workgroup met twice to date. The initial meeting was a brainstorming session. A few members of the workgroup reviewed the APSA FAQ document that was last revised by the APSA Working Group in October 2011. This document was posted on the CalCUPA Forum's website, but it has been removed from the website as it requires major revision. In addition to the APSA FAQs, other questions that were directed towards the APSA Working Group were also added. Each question was noted as an idea and categorized into various sections of the proposed regulation format. The regulations workgroup last met on July 8 to start reviewing the ideas by sections. The workgroup wanted a legal opinion on the purpose of the AST regulations, including the intent of the law, such as the protection of waters of the state. The workgroup last reviewed definitions requiring additional clarification or inclusion by reference of the federal SPCC rule requirements. Workgroup members also requested a legal opinion on a letter from Assembly member Laird (now the Natural Resources Agency Secretary) to the journal, dated September 11, 2007. Can or should the letter be used as basis for the AST regulations? This letter is included in the annotated Health and Safety Code book at the beginning of APSA.

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Andrea Fox stated that the APSA FAQ document was helpful as it provided initial guidance and a revised FAQ would still be helpful. However, Craig Fletcher cautioned that guidance documents become “de facto” regulations. Another member stated that there is more flexibility in a guidance document compared to regulations, but everyone realizes that it is not law.

James Parsegian mentioned that the law says to write regulations and the regulation enforces the law. Guidance documents including FAQs are information on the regulations.

The regulations workgroup will next meet on July 31.

3. Underground Storage Tanks (UST) recycled into ASTs

A workgroup has been formed to review the issue of recycled USTs that have been converted into ASTs. The workgroup is expected to have their first meeting in August. Preliminary research has been conducted on the history of fire code requirements of aboveground tanks, particularly those located on farm and agricultural communities. Previous fire code editions did not allow any USTs to be converted into ASTs at any type of facility; the current fire code still does not allow any USTs to be converted into ASTs at any facility.

Wayne Geyer stated the reasons why USTs should not be converted into ASTs. Industry standards do not allow for USTs to be converted into ASTs. Two items are required for ASTs that are lacking in USTs: (1) Emergency release vent; and (2) reinforcement of the ends of tanks to make them stiff. USTs are generally thinner by design and supported by the surrounding soil. Wayne Geyer also discussed the difficulty and hazards of retrofitting old farm tanks and recycled USTs in the field.

However, there are tanks that have been manufactured exclusively for farm and rural construction site uses that do not require listing but must meet a certain standard (originally NFPA Standard 395). These tanks require normal venting depending on the volume of the tank and cannot exceed 1,100 gallons. Any flammable or combustible tank exceeding 1,100 gallons will require compliance with the fire code and industry standards, which includes an emergency release vent.

Lou Dinkler mentioned that under ARB’s Phase I vapor recovery systems upgrade requirements, emergency release vents are required. Two-inch diameter vents are insufficient to meet ARB’s requirements.

D. ASTs at Oil Production Sites

At the first meeting in April, the committee discussed ASTs at oil production sites. Under APSA, an aboveground storage tank does not include an aboveground oil production tank that is subject to section 3106 of the Public Resources Code. Some of these tanks were deemed difficult to distinguish in terms of authority or jurisdiction. OSFM wrote a letter to DOGGR requesting clarification of authority regarding ASTs attendant to oil production.

Joyce Jaszarowski reviewed the details of DOGGR’s reply letter. If the tank or other facility is used for a purpose other than oil and gas production, then it is generally not attendant to oil and gas production; therefore, the tank or other facility is not under DOGGR’s jurisdiction

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but is under the CUPA's jurisdiction. A facility that is attendant to oil and gas production is better answered on a case-by-case basis. A 1998 Memorandum of Agreement (MOA) between DOGGR and OSFM states that "upon request by one agency, the other agency agrees to send a representative into the field to clarify any jurisdictional boundary not plainly established in the MOA." Basically, in cases where the jurisdiction regarding a certain tank is unclear, then we may follow the directions established in the MOA. The CUPA may contact a DOGGR district office or Joyce Jaszarowski for assistance.

James Parsegian stated that since the MOA was completed in 1998, it may need to be updated and he suggested that OSFM Pipeline Safety Division be contacted to determine whether or not the MOA should be updated.

Before proceeding with new business, the Committee Chair followed up on a few action items from the last meeting in April:

1. The OSFM policy on advisory committee will be available once finalized and approved.
2. A representative from the engineering consulting industry has been added to the committee. Craig Fletcher has been appointed by the State Fire Marshal to represent the private sector/consulting industry to serve on this committee. Another member pointed out that an environmental group should also be added to the committee; this recommendation was rejected as this committee has sufficient representation of members whose goals are to protect the environment.
3. A consolidated inspection checklist for use by the CUPAs was raised at the first meeting in April. This item was discussed during the CUPA's implementation of APSA portion of the committee meeting.

V. New Business

A. New OSFM CUPA Staff

The Committee Chair introduced the new Staff Environmental Scientist Denise Gibson, who will be working in the OSFM CUPA Program. Denise Gibson came from California Office of Emergency Services (formerly California Emergency Management Agency), another state agency with Unified Program responsibility (Hazardous Materials Business Plan and California Accidental Release Prevention programs). She had previously worked with the California Department of Transportation (Caltrans) as an environmental planner on California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) transportation projects; she was also a peace officer and a firefighter.

OSFM is still in its hiring process for the second position (Environmental Scientist).

B. Timeline for Regulations

James Parsegian reiterated the basic summary of the rulemaking process. The timeline varies and is greatly dependent on the committee and workgroup members' commitment to completing the proposed regulations.

When the proposed regulations package is approved by the committee and Division Chief, it is forwarded to the Code Development and Analysis Division for review. Once reviewed

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by that division and approved by the State Fire Marshal, the proposed regulations package is sent to the agency (Natural Resources Agency) for approval and then submitted to Office of Administrative Law (OAL) for posting for the 45-day public comment period. After the comment period, all comments must be addressed by either the “final statement of reasons” (FSOR) or change in regulation. If the regulations are changed, then it must go through a 15-day comment period where only changes to the regulations brought up during the public review process can be addressed. When the regulations package is completed, it is sent to OAL for final approval; they have 30 days to approve or reject the package. If approved, then it is sent to the Secretary of State for publishing. Publishing is done four times a year (January, April, July and October). Once submitted to OAL, the process usually takes about one year.

James Parsegian suggested a one year timeframe for the workgroup and committee to develop the proposed regulations language and another year for the OAL rulemaking process, which includes public review. The entire process should take approximately two years. The committee was reminded that laws are interpreted by the attorney general; regulations are interpreted by the regulatory agency.

Lou Dinkler asked if the OSFM will conduct workshops for public comments. James Parsegian replied that OSFM does not generally conduct workshops for proposed regulations; all advisory committee meetings are open to the public for that reason. If a hearing is requested, however, then two hearings will be conducted; one in Southern California and the other in Northern California.

VI. Open Forum and Public Comments

The Committee Chair asked the members and guests to discuss additional items, issues or concerns, if they had any. No one had any additional item, issue or concern to discuss.

VII. Action Items

A. Violation Checklist

1. Mike Vizzier is to provide the APSA program violation checklist that is included in the Unified Program data dictionary and CERS (California Environmental Reporting System).
2. The Committee Chair is to provide a link to the CalCUPA Forum list of CUPA’s inspection checklists on the APSA program.

B. DOGGR Reply Letter and OSFM-DOGGR MOA

1. The Committee Chair is to provide copies of both the DOGGR reply letter and the MOA to committee members.
2. The Committee Chair is to contact OSFM Pipeline Safety Division to see if MOA needs to be updated.

VIII. Schedule Next Meeting and Adjourn

The next meeting will be held on Wednesday, October 2, 2013, from 10:00 a.m. to 2:00 p.m. The location will be determined at a later time. The meeting was adjourned by the Committee Chair at 3:28 p.m.