



**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 Minutes

Meeting Date: January 23, 2014
Meeting Time: 10:00 am – 2:00 pm
Meeting Location: Office the State Fire Marshal, Training Conference Room
1131 S Street
Sacramento, California 95811

Staff Present:

James Parsegian, Supervising Deputy State Fire Marshal
Paul Eck, Senior Staff Counsel
Jennifer Lorenzo, Senior Environmental Scientist, Committee Chair
Denise Gibson, Senior Environmental Scientist

Members Present:

Jason Boetzer,* Calaveras County Environmental Health Certified Unified Program Agency (CUPA)
Craig Fletcher, Fletcher Consultants
Adrea Fox,* California Farm Bureau Federation
Philip Gairson,* Southern California Fire Prevention Officers
Wayne Geyer,* Steel Tank Institute (STI)
Michael Huber, Department of the Navy
Michelle Le, Pacific Gas and Electric (PG&E)
Jay McKeeman, California Independent Oil Marketers Association
Vince Mendes, Fresno County Environmental Health CUPA
John Paine, California Environmental Protection Agency (CalEPA)
Sande Pence,* San Diego County Environmental Health CUPA
Randy Sawyer* (Co-Chair), Contra Costa County Hazardous Materials Division CUPA
Stuart Strum,* Defense Logistics Agency
Todd Tamura, Tamura Environmental Inc. (Consultant to Western States Petroleum Association [WSPA])
Janice Witul,* U.S. Environmental Protection Agency (US EPA)
Patrick Wong, PG&E
Mike Vizzier* (Co-Chair), San Diego County Environmental Health CUPA

Guests Present:

Kevin Buchan, WSPA
Margaret Rosegay, Pillsbury Winthrop Shaw Pitman LLP (Legal Representative of WSPA)
Christina Graulau,* Department of the Navy
Ryan Bailey,* Sacramento County Environmental Management Department CUPA

* *Via Conference Call*

Members Absent:

Raymond Bizal, National Fire Protection Association (NFPA)
Stephen Crimando, American Petroleum Institute
Armand Delgado, Verizon Wireless
John Denholm, Oil Changer, Inc.
Louis Dinkler, Air Resources Board
Rich Erickson, Donlee Pump Company
Laura Fisher, State Water Resources Control Board (State Water Board)
John Gamper, California Farm Bureau Federation
David Harris, Donlee Pump Company
Joyce Jaszarowski, Division of Oil, Gas, and Geothermal Resources (DOGGR)
Peter Reich, US EPA
Jason Rizzi, Northern California Fire Prevention Officers
Patty Senecal, WSPA

I. Call to Order

Committee Chair Jennifer Lorenzo called the meeting to order at 10:03 a.m. and welcomed everyone to the meeting.

II. Roll Call and Introductions

Denise Gibson conducted the roll call and it was determined that a quorum was present. Attendees and guests introduced themselves.

III. Approval of Minutes

Minutes from July 11, 2013, were reviewed. The Committee Chair amended the minutes per Craig Fletcher's recommendations. Jay McKeeman motioned to accept the minutes from April 9, 2013, as amended and Mike Huber seconded the motion.

Minutes from October 2, 2013, were also reviewed. Jason Boetzer motioned to accept the minutes from October 2, 2013, and Craig Fletcher seconded the motion.

IV. Review of Action Items from October 2, 2013

Completed Action Items

1. The link to the US EPA inspection checklists was provided to committee members on January 22, 2014. The same link also provided the revised “SPCC Guidance for Regional Inspectors” document.
2. Denise Gibson contacted select individual members of the committee and Recycled Underground Storage Tanks (UST)-Farm Tanks Workgroup for information on recycled tanks.
3. Rich Erickson provided Ms. Gibson with the advertisement of a company that sold recycled tanks.
4. The presentation on recycled USTs was made available to committee members in October 2013.
5. The APSA Regulations Workgroup summary spreadsheet of topics for potential inclusion in the regulations was made available to committee members in October 2013.
6. Completed APSA regulations feedback forms were provided to committee members in October 2013.

Ongoing Action Items

1. The Department of Forestry and Fire Protection (CAL FIRE) – Office of the State Fire Marshal (OSFM) “CUPA” Program staff met with Pipeline Safety Division and DOGGR concerning the 1998 Memorandum of Agreement (MOA). The MOA has been updated to include the APSA Program information. The MOA has been submitted to DOGGR for their review and approval.

V. Old Business – Workgroup Updates

A. Surcharge

CAL FIRE – OSFM sent the justification language to CalEPA on November 7, 2013. CAL FIRE - OSFM met with CalEPA last week to establish the timeline for the surcharge rulemaking process, which is an “abbreviated” version of the rulemaking process with the Office of Administrative Law (OAL). Title 27 of the California Code of Regulations requires a period of at least 120 days before the surcharge can become effective. The rulemaking package will need to be sent to

OAL in March to have the surcharge be collected in the new state fiscal year cycle (2014-2015) beginning on July 1, 2014.

Michael Huber was concerned that the surcharge collection beginning July 1, 2014, seemed too early. Jay McKeeman asked if the surcharge can be collected in advance of OAL's approval. The Committee Chair and John Paine stated that collecting the surcharge early is not recommended; the CUPAs do not have the authority to assess and collect the new surcharge.

Amendments to the state surcharge will be published in the California Regulatory Notice Register ("Z-Register"). CalEPA will accept comments on the proposed surcharge for at least 30 days. Following the 30-day comment period for which CalEPA will receive but are not required to address, the CalEPA Secretary will publish the final surcharge in the California Regulatory Notice Register. This rulemaking is expected to be completed so that the effective date for CUPAs to assess and collect the APSA surcharge is July 1, 2014.

The California Code of Regulations, Title 27, Section 15240 requires at least 60 days following the publishing of the final surcharge in the California Regulatory Notice Register before the CUPA may begin to assess and collect the new surcharge.

Randy Sawyer suggested that we work with the regulated community to get the information out to the public. CalEPA suggested that a letter from the advisory committee regarding the surcharge would be beneficial and may be combined with the information bulletin regarding the surcharge.

The surcharge will be included with the single fees that are generally assessed by the CUPAs. The state surcharges are generally itemized on each bill that regulated facilities receive from the CUPAs.

Mike Huber asked if the surcharge collection is a part of the California Environmental Reporting System (CERS). The state surcharge is not a part of CERS. CERS is not a database management system that handles collection of fees.

The Committee Chair explained the process on the state surcharge collection. If the CUPA does not assess any single fee on a particular regulated facility, then the CUPA has the option to waive the state surcharge. All tank facilities regulated under APSA will be assessed the flat rate of \$26.00; there are no tiered rates. Conditionally exempt sites, such as the farms, nurseries, logging and construction sites, are not exempt from paying the state surcharge; they are only exempt from having to prepare and implement the spill prevention, control and countermeasure (SPCC) plan provided they meet certain conditions.

B. Regulations

1. Subgroup A

Subgroup A is waiting on the purpose and scope of APSA, which will be the main topic of discussion with the CAL FIRE staff counsel and a few members of the committee along with their lawyers after today's advisory committee meeting.

2. Subgroup B

Sande Pence briefly discussed the status of this subgroup. Proposed language has been drafted for Articles 4 and 5 regarding general and specific provisions and requirements. The implementation section is reliant on the purpose and scope of APSA; so, this particular section has been placed on hold. The subgroup has proposed language about the use of facility site maps or diagrams in other plans already required by the CUPA to fulfill the facility diagram in an SPCC plan. The subgroup is proposing to include the federal requirement on substantial harm criteria and the requirement for professional engineers to be licensed in the State of California. The subgroup has placed the installation and permitting sections on hold, because these sections are linked to the discussions with the Tanks in Underground Areas Group. All concepts that were specific to Articles 4 and 5 have been discussed. The group felt that the federal SPCC requirements are sufficient and that no further clarifications are necessary to be included in the state APSA Program regulations.

3. Tanks in Underground Areas

The main goal of the Tanks in Underground Areas Group is to have applicable tanks in underground areas be regulated under APSA instead of the UST requirements. Based on the list of UST requirements provided by the State Water Board, the group's objective is to identify the AST requirements that are not equivalent or as effective in protecting the environment compared to the UST program. This group is still in the process of addressing each item on the list to determine whether or not the AST requirements in either the federal SPCC rule or the fire code satisfy or are equivalent to the UST requirements. In instances where the AST requirements greatly differ or are not satisfactory in protecting the environment, then the group will propose language that is equivalent to the UST requirement or at least as effective in protecting the environment.

Jay McKeeman asked if legislative changes to both the UST law and APSA will still be required in the future. The Committee Chair confirmed that both UST and AST laws will need to be changed, particularly on tanks in underground areas.

At the request of the State Water Board, the regulations for tanks in underground areas will need to be in place before legislative changes to the UST law and APSA. The proposed regulations for the tanks in underground areas only apply to those facilities with 1,320 gallons or more of petroleum.

Mike Vizzier stated that the language should be crafted carefully regarding buried piping requirements; secondary containment is not always practical. Craig Fletcher stated that the group has done an analysis of the various types of tanks in underground areas so that the group is cognizant.

The Committee Chair stated that it will take time to propose regulations from this group. The proposed regulations may not be a part of the current APSA Program regulations package as language will likely be proposed in both Title 19 and Title 24 of the California Code of Regulations. The California Fire Code is in Part 9 of Title 24 of the California Code of Regulations, which is done through the California Building Standards Code Commission instead of the Office of Administrative Law.

Mike Huber commented that the Tanks in Underground Areas Group is doing well in the analysis of the technical aspects. However, he felt that the broader APSA Regulations Workgroup should also participate in the discussion. He hopes a big package does not come out of this group, because he felt that a “large” rulemaking package would raise questions or concerns. The State Water Board wanted this group to be exclusive for a reason and that any work product will be presented to the APSA Regulations Workgroup.

Craig Fletcher stated that there are several requirements already in place in the federal SPCC rule as well as the fire code that address tanks in underground areas; therefore, there will be no duplication of requirements.

4. Subgroup C

According to Michelle Le, there were six concepts that needed to be addressed in the regulations from this subgroup.

- The group had divergent opinions on the concept of inspecting tank facilities with less than 10,000 gallons of petroleum by Unified Program Agencies. Therefore, this item will be addressed with the APSA Regulations Workgroup.
- This group agreed that the requirement for return to compliance within 30 days (for minor violations) will be similar to what is already required under current Unified Program law, specifically the Health and Safety Code, Chapter 6.11 (Unified Program administration law). However, we will need to keep in mind that modification or repairs identified by an engineer may take up to six months. (Note that modifications or repairs are likely not considered minor violations and, therefore, may take longer than 30 days for return to compliance).
- In addition to taking the initial training course and passing the exam as

- required under APSA, training for Unified Program Agency (UPA) inspectors will include an annual refresher training requirement; training documentation will be required to be retained for at least three years.
- Inspections may also be conducted by CAL FIRE – OSFM provided the UPA is notified in advance.
 - The last two concepts were regarding the annual tank facility statement requirement and the hazardous materials business plan submittal in lieu of annual tank facility statements. In addition, certain information was identified by CAL FIRE – OSFM as necessary to implement the program, which is tied to the last two concepts. The data fields will be included in CERS. The data fields will need to be determined if they will satisfy the annual tank facility statement under APSA. Any data fields will require approval of the Data Steering Committee.

5. APSA Regulations Workgroup

The three subgroups (A-C) will reconvene with the larger APSA Regulations Workgroup since many of the topics for each subgroup have been addressed. Topics that have not been settled will be discussed with the larger APSA Regulations Workgroup. The next APSA Regulations Workgroup will meet on Thursday, February 6, 2014, at the CUPA Conference in Burlingame.

C. Recycled USTs-Farm Tanks

Denise Gibson presented the status of this group. An information bulletin on recycled USTs as ASTs has been drafted and is under review by management. The draft version will be submitted to this group for review and comments. Lastly, the bulletin will also be submitted to the advisory committee for review.

This group was initially established to address issues about USTs being recycled into ASTs (storing petroleum) which are commonly found throughout the Central Valley, especially on farms and agricultural lands. The group would have also proposed regulations to address this issue. However, CAL FIRE – OSFM does not have the authority on all of these tanks; the local authorities having jurisdiction (AHJ) do. CAL FIRE – OSFM's authority is limited to facilities such as state owned, state leased, state occupied facilities, prisons etc. Developing an information bulletin was the best solution at this time, along with educating the regulated community and Unified Program Agencies.

John Paine asked if CUPAs have the authority regarding this issue. The Committee Chair replied that installation and construction of ASTs are in the fire code and are enforced by the local AHJ. CUPAs do not have that authority regarding the installation and construction of these tanks unless they are the fire authority. CUPAs may contact the local city or county fire code official or the building/planning official. However, CUPAs have the authority under APSA to cite facilities with these recycled USTs, because the tanks do not meet engineering standards as ASTs. Also, the Tanks in Underground Areas Group is considering proposing language to enable CUPAs, including health department

CUPAs, to enforce the fire code with regards to ASTs where necessary.

Jay McKeeman asked if there is a matrix of regulatory authority and requirements on these tanks. The Committee Chair and Denise Gibson stated there is none at this time. However, there will be an outreach effort for the farm and agricultural community and training for CUPAs.

VI. New Business

A. CAL FIRE – OSFM Staffing

As of December 31, 2013, Ben Ho, who was the Chief of the Fire Engineering Division, retired. The interim Chief is Kevin Reinertson, who is the Chief of the Code Development and Analysis Division (in charge of rulemaking). The new Chief has been selected and is going through a six-month background check, which is expected to be completed around June.

The Environmental Scientist position is now vacant. We are in the process of hiring a new environmental scientist.

B. APSA Online Training – Issuance of Certificates

CAL FIRE – OSFM met with CalEPA last week. We will be issuing the certificates for UPA inspectors completing the APSA inspector training program and passing the exam. Once CalEPA notifies San Diego County CUPA about transferring this responsibility to our office, then it will be official.

VII. Open Forum and Public Comments

The Committee Chair asked the members and guests to discuss additional items, issues or concerns, if they had any.

Ryan Bailey asked for clarification on the APSA surcharge. He thought that only those that the CUPA was required to inspect (10,000 gallons or more of petroleum) would be assessed the APSA surcharge; he also thought that the facilities who are assessed the CUPA oversight surcharge are automatically assessed the APSA surcharge. The Committee Chair and CalEPA explained that the APSA surcharge is required to be assessed on each APSA regulated tank facility with 1,320 gallons or more of petroleum. The APSA surcharge is separate from the CUPA oversight surcharge. Also, a CUPA cannot automatically assess the APSA surcharge on a facility that is assessed the CUPA oversight surcharge. The CUPA must be able to identify its universe of APSA tank facilities with 1,320 gallons or more of petroleum, including the conditionally exempt sites. There may be a few tank facilities that are regulated under the federal SPCC rule but may not be regulated under APSA.

Jason Boetzer stated that they have a database to sort out the individual program elements, so that they know their universe of APSA regulated tank facilities. Not all CUPAs have this capability but will need to find a way to separate the APSA tank facilities for billing purposes if they do not already have this capability.

The Committee Chair specified that CAL FIRE – OSFM will not be stringent in evaluating CUPAs on their collection of the APSA surcharge during the initial implementation phase.

Ryan Bailey also asked if the tank facility inspection requirement will be changed. The Committee Chair indicated that Subgroup C was handling the inspection requirement, specifically the UPA inspection requirement on APSA tank facilities with 1,320 gallons or more but less than 10,000 gallons of petroleum.

Vince Mendes stated that it would be valuable to have documentation showing the process that led to the decision on the APSA surcharge. The documentation will be beneficial when CUPAs approach their administration, elected officials and industries in their respective jurisdiction regarding the increase in the state surcharge. Both John Paine and Vince Mendes suggested that a letter should be generated from this advisory committee regarding the process and decision on the APSA surcharge, including the members that were involved. This letter could be combined with the information bulletin.

Christina Graulau asked if we were adding other chemicals or materials other than petroleum products to the APSA Program. The Committee Chair responded that only petroleum products are regulated under APSA.

VIII. Action Items

- A. Submit a copy of the updated MOA with DOGGR to committee members.
- B. Develop an information bulletin regarding the APSA surcharge for the CUPAs and the regulated community. Develop a letter from the CAL FIRE – OSFM regarding the process and decision on the APSA surcharge. Work with CalEPA on the information bulletin and letter regarding the APSA surcharge.
- C. Review of the Recycled USTs-ASTs Information Bulletin by the Recycled USTs-Farm Tanks Workgroup and advisory committee.

IX. Schedule Next Meeting and Adjourn

The next meeting is scheduled for Thursday, April 10, 2014, from 10:00 a.m. to 2:00 p.m. and will be held in Sacramento.

The meeting was adjourned by the Committee Chair at 11:39 a.m.