

**MINUTES OF THE
STORAGE TANK ADVISORY COUNCIL MEETING**

September 24, 2018

2:00 p.m.

**Oklahoma Corporation Commission
Jim Thorpe Office Building
2101 N. Lincoln Blvd., Room 105
Oklahoma City, OK 73105**

The notice and agenda for the Storage Tank Advisory Council meeting were publicly posted at the Oklahoma City offices of the Oklahoma Corporation Commission at approximately 12:35 p.m. on September 19, 2018, by Commission employees acting under the direction of Ms. Robyn Strickland, Director, Petroleum Storage Tank Division. The notice and agenda were similarly posted on the Secretary of State's website, www.sos.state.ok.us. A copy of the notice and agenda is attached to these minutes.

No **Commissioners** were present for the meeting.

Council members present were **Deanna Atkinson, Keith Davis, Joe Foster, Kathy Lippert, Tommy Shreffler, and Joe Stephenson**. **David Guthrie, Michael Key, Mike Sawyer, and Commissioner Ray Vaughn** were absent.

Joe Stephenson, Chairman of the Storage Tank Advisory Council (STAC), stated that a quorum was present and called the meeting to order at 3:15 p.m.

The **first order of business** was the approval of the minutes from the last meeting. **Joe Foster** made a motion to approve the minutes from the last meeting and **Deanna Atkinson** seconded it. All members present approved the motion.

The **second order of business** was the Financial Report by Denetta Brannon, PSTD Comptroller. Ms. Brannon reported the August, 2018, assessment was \$1,744,631.12; total revenue was \$1,796,792.93; there were 95 claims totaling \$1,551,531.43; total operating expenses for August, 2018, were \$227,185.50; the Indemnity Fund balance was \$22,528,932.90 less encumbered funds in the amount \$22,376,033.17 leaving an available balance of \$152,899.73.

Tommy Shreffler made a motion to accept the Financial Report and **Kathy Lippert** seconded it. All members present approved the motion.

The **third order of business** was proposed rules by Travis Weedn. Mr. Weedn introduced Council members to Darren Ferguson, PSTD Staff Attorney, and Justin Lankford, Manager of Compliance and Inspection Department.

Mr. Weedn reminded attendees to sign the attendance sheet so it can be part of the rulemaking record. Mr. Weedn said the Commission is now using Govdelivery, a new service for meeting notices and rulemakings and encouraged everyone to subscribe on the agency's website located under the "Conducting Business" tab and the Proposed Rules link. Robyn Strickland said that anyone who was previously on PSTD's email distribution list was automatically added to the new service.

Mr. Weedn said proposed rules are being presented to members of the Council to consider and discuss before voting to recommend staff proceed with a rulemaking. After the rulemaking begins there will be two technical conferences, where the public is invited to attend and given the opportunity to publically comment on proposed rules; a comment period to provide another opportunity to comment if you cannot or do not want to attend one of the technical conferences. After the comment period ends the Commissioners will have a hearing to determine whether to adopt the proposed rules. If adopted, they will be submitted to the Governor and the Legislature to approve.

Mr. Weedn said there are a few minor changes being considered for Chapter 5, the Commission's Rule of Practice. The major revision will change all references of the Oklahoma Storage Tank Regulation Act to the Oklahoma Petroleum Storage Tank Consolidation Act which are the new statutes effective November 1, 2018. Any revisions to Chapter 5 rules would not be effective until around this time next year. In addition, language relating to fees for antifreeze permits and permit renewal currently in Chapter 16 Antifreeze rules are being transferred to Chapter 5 where all PSTD fees are located. The rules pertaining to administrative approvals for applications for variances to PSTD rules were transferred to Chapter 5 last year and become effective October 1, 2018, and PSTD is proposing a revision to allow applicants 10 days to apply for a notice of hearing before an ALJ for variance applications that staff denied.

Mr. Weedn asked if Council members had comments or questions regarding proposed changes in Chapter 15 Fuel Inspection.

165:15-3-21. **Deanna Atkinson** asked if the capacity for manual tank gauging from 2,000 to 1,000 gallons was an EPA requirement. Justin Lankford said EPA put a timeframe of 10 years after upgrade for manual tank gauging on tanks 1,001-2,000 gallons. **Ms. Atkinson** asked if manual tank gauging would be allowed if a 2,000 gallon tank was installed. Mr. Lankford said a new 2,000 gallon tank would have to be double walled and interstitially monitored.

Mr. Weedn said staff failed to include in Chapter 15 the proposed revisions that clarify the process for issuing NOVs, field citations and formal enforcement that are proposed in Chapters 25 and 26, so those additional revisions will be made Chapter 15 for the next meeting.

Mr. Weedn asked if Council members had comments or questions regarding proposed changes in Chapter 16 Antifreeze. There were no comments or questions regarding Chapter 16.

Mr. Weedn asked if Council members had comments or questions regarding proposed changes in Chapter 25 Underground Storage Tank rules.

165:25-1-41. **Joe Foster** asked if the OCC considers a licensed consultant to be an agent of a tank owner. Mr. Weedn said an agent could be a licensee or tester who is working for a tank owner. **Kathy Lippert** prefers her client report a release because she would be responsible if she could not reach anyone within 24 hours. **Mr. Foster** said his contract specifically states that he is not the agent and the lack of clarity and inability to understand the rule is a problem. **Tommy Shreffler** said the rule does not say it must be filed by the agent it says it could be and there are owners that do not want to do it so they negotiate with their licensee to do it. **Ms. Lippert** said it does take the burden off of the agent and allows them to tell their client they are required to report within 24 hours. **Mr. Foster** said the same language is being put in other places in the rules.

Mr. Weedn said staff has tried to make release reporting easier and more convenient for everyone. Releases can be reported by email and there are phone numbers for reporting on weekdays, weekends, on holidays and for emergencies. Mr. Weedn said an agent would not be fined for situations where it was the owner's responsibility but there are times when it is clearly the licensee's responsibility. Ms. Strickland said staff has a phone for weekends, Salim has a phone as well, and also receives the 24-hour release reporting emails. "Agent" has been in the rules for years and it is also in the statute. It was being added to this rule to be consistent. **Mr. Foster** said the way it is written the agency requires owners, operators or their agent to provide the information and asked who would be held responsible if no one did it. Mr. Weedn said it could be any of them.

Mr. Shreffler felt there could be some conflict there. **Ms. Lippert** said the owner or operator is usually fined. **Mr. Foster** said "or" makes it unclear who is responsible. Whether or not a consultant is a legal agent has been an issue since the program started and that is why he is asking. Most of the time they are not responsible but the issue needs to be addressed. Ms. Strickland said the consultant usually reports the release anyway. **Mr. Foster** agreed but his company does not speak for a client unless they tell them to do so. **Ms. Lippert** said if they do they subject themselves to liability, fines to get into the fund, etc. **Mr. Foster** said if the agency wants to convey that responsibility to the consultant it should be written into the rules. Mr. Weedn said any person that even knows about a release is supposed to report it and the fine structure is set up that way, however, someone sitting at a gas station who sees a huge release but didn't report it is usually not fined. The people working with the tank owner, including licensees who get a lab result back and can see that a release occurred, are responsible for reporting it within 24 hours.

Ms. Atkinson said licensees and even testing companies that are not licensed should report a release. She did not want to see it tied to licenses because you are penalizing Oklahoma testing companies. **Mr. Shreffler** said basically we are all responsible for reporting a release but the ramifications for not reporting are different for everyone.

Owners are responsible financially but for consultants there are rules to reprimand licensees versus a fine. Mr. Weedn said there could be a fine imposed.

Ms. Lippert said the agent issue was discussed 10 years ago and there was a statute change put it in the statute. It is in other places in the rules and is not new. **Ms. Atkinson** commented that it does not only apply to consultants but also to testers who are not licensed. **Ms. Lippert** said field staff who are sampling should know they are also responsible for reporting in 24 hours. **Mr. Foster** prefers the responsibility remain on the tank owner and he should not be responsible for reporting unless the tank owner tells him to do so.

165:25-1-53(f). **Ms. Atkinson** asked if it could be changed to say "must be maintained on Commission forms" and Ms. Strickland said staff would make the revision.

165:25-1-56(b)(1). **Ms. Atkinson** asked for owners who did not get a copy of a suitability study from the previous owner if it is understood that obviously one had been performed or the station would not be in operation. Mr. Lankford said if they did not have one they should have another suitability study done. Darryl Cole said they would accept documentation on the original design or test the system. **Ms. Atkinson** asked if EPA requires owners to have it or was it one and done.

Terri Roberts said that was years ago and EPA said it was only needed one time. Mr. Cole said if the owner did not they could have the system tested and checked out by an authorized person. Mr. Lankford said many of the suitability studies are imaged in our files.

Ms. Atkinson said there is a matrix based on the age of the tank and if she could not find the original suitability where it projected the lifetime of the tank based on zero corrosion at "x" point in time and now 15 years later would it still be needed since it has been cathodically protected this whole time. Mr. Lankford said it would fail now and Mr. Cole agreed. Mr. Cole said a cathodic protection expert would have to make that determination. **Ms. Atkinson** asked if the likelihood of the failure would be greater because they are taking into consideration the age of the tank so you are not a good candidate for CP. Mr. Lankford said if a tank was 35 years old, had a suitability study done 25 years ago and they have lost it, chances are today it would not pass to accept corrosion protection again.

Mr. Weedn said the revision is just to clarify. If the proposed language was taken out the rule still says the owner must have the records.

Ms. Roberts said everyone had to have a suitability study done in order to add cathodic protection to their tanks and they had to prove that years ago. She thought EPA said they had to prove it one time and the records did not have to be maintained. Ms. Roberts said it could possibly present an issue if the store sold five years ago and there is a release today. In a substantial compliance review you want to see my suitability study that proved my tank was suitable to add corrosion protection to it and I don't

have it. You still have to do the 3 year re-certifications and impressed current readings, if there is impressed current, you still have to maintain the cathodic protection system but you could be fined for not having the suitability study.

Ms. Atkinson asked if it is once and done or do they really need it forever. **Ms. Strickland** said they will check with EPA and can discuss next meeting.

165:25-1-60(c). **Ms. Atkinson** asked if it could be changed to forms specified by the Commission like the other rule. **Ms. Strickland** said they would revise it.

165:25-1-67(b). **Ms. Atkinson** asked if the revision means that with the new containment and spill bucket requirements if there is a failure the Commission must shut them down until the repair is made. **Ms. Strickland** said the rule says that PSTD must shutdown a UST system if a violation occurs on anything listed under (b). **Ms. Atkinson** said if the containment sump or spill bucket fails it is out of compliance with the Commission requirements so she would be shut down. **Tommy Shreffler** commented that the new language is only moving from may shut down to must shut down probably because it fits better. **Ms. Atkinson** asked if there would be any flexibility. **Mr. Shreffler** asked what **Ms. Atkinson** would like to see different. **Ms. Atkinson** said due to a shortage of installers you cannot get the repairs done and there is 3 month wait. She asked if the facility would be shut down for 3 months until someone can come out. **Ms. Strickland** said PEI's website says there is no shortage of testers or installers and there are plenty of licensed people available. **Ms. Atkinson** said no shortage nationwide and that just increases the cost. **Ms. Strickland** said they did a survey and there are local people that are available. They were told if they called early enough they could get to it that day. **Ms. Strickland** said this is the rule we must go by and we will work with people to come into compliance.

165:25-1-103 and 104. **Ms. Lippert** said the language is the same so it is redundant to separate vapor and groundwater monitoring. Vapor monitoring is still mentioned under groundwater so if it is going to be separated the language should reflect it. **Mr. Weedn** said the licensing requirements are different and since fees were separated in Chapter 5 we felt it needed to be separated in Chapter 25. **Ms. Strickland** said we will make revisions.

165:25-1-105. **Mr. Foster** asked if progressive disciplinary action was something staff felt needed to be done in the rules. **Mr. Weedn** said the idea was to come up with the procedures for licensees who continually have the problems over and over again. For example, a private reprimand would go into your file and the public isn't even aware. If it continues to happen we have progressive procedures that are followed. **Mr. Foster** said he understands it has been a challenge at times in the past. **Mr. Weedn** said we would have a record of the disciplinary process that is the same for all licensees who do not abide by the rules if it ever got to the point of suspending a license. **Mr. Foster** said he is ok with the rule. **Ms. Lippert** agreed and felt it was written fairly and although it's an awful thing to have to discuss it needs to be addressed.

Ms. Lippert asked why there were revisions throughout the rules changing Petroleum Storage Tank Regulation Act to the Petroleum Storage Tank Consolidation Act. **Ms. Strickland** said staff consolidated the various statutes in other Titles that related to PSTD were all consolidated into Title 17 to make it easier for the regulated public, stakeholders and staff. **Mr. Weedn** said they will be effective November 1 so we wanted to update our rules to reflect the correct name. **Ms. Lippert** asked if **Michael Key** had submitted any comments on the proposed rules since he was not able to attend the meeting. **Ms. Strickland** said he had not submitted any comments but there will be plenty of time and opportunities to do so.

165:25-1-107(b). **Ms. Atkinson** suggested cleaning up the language in (b) for clarity and (c) appears to say almost the same thing as in 105. **Mr. Foster** agreed and felt it could be cleaned up a little more.

165:25-2-53. **Ms. Atkinson** asked if there was a list of accepted schools or certifications that staff is going to require since there are several different accrediting schools. **Mr. Weedn** said if they fit the definition of corrosion expert it is fine and we are not requiring a specific certification. **Ms. Atkinson** said she was good with the language.

165:25-2-55.1(c). **Ms. Atkinson** asked if it made a difference if it is a metallic line or any line. **Mr. Lankford** said other types of line can be repaired but metallic lines cannot be repaired. There have been instances where someone drives a stake through a fiberglass line and the manufacturer allows it to be repaired and retest but we are not allowing metallic lines to be repaired.

165:25-2-55.1(f). **Ms. Atkinson** asked on existing facilities that are replacing underground tanks or making repairs at a submersible pump or repairs beneath a dispenser would that include shear valves and flex connectors. **Mr. Lankford** said they would have to install a tank sump or dispenser sumps. **Ms. Atkinson** asked if that was a required by EPA. **Ms. Strickland** said we would check and discuss at the next meeting.

165:25-2-133. **Ms. Lippert** said there was a lot that was added to the TOU rule but it looks like it is just clean up language and asked if there is anything new. **Mr. Weedn** said the goal is consistency for all TOU tanks and the only new language is (d) to address the issue of completely abandoned facilities but the tanks are still listed as CIU. At some point they need to be declared TOU because they are abandoned. If we determine the status of the tank because of this rule, we would notify the last registered tank owner they have 60 days to register the tank TOU, come into compliance with the requirements or permanently close the tank.

165:25-3-6.21. **Ms. Atkinson** asked if a station that uses ATG as their primary method but has SIR as a backup is really busy one month and they don't shut down to do the appropriate test can they use SIR as a secondary method without alerting PSTD first. **Mr. Lankford** said if a person has an ATG that was struck by lightning and they have SIR for a secondary method while the ATG is being repaired we can accept the SIR for the next 30 days. Even if it's because they don't have the money for the repairs just let us

know they are switching to SIR. We really don't have a problem with that. What we do not want is when the primary method fails but the secondary says it's ok and switching back and forth to see which one might pass. **Ms. Atkinson** asked if they could use SIR if they do not have 0.1 test due to too much business. Mr. Lankford said if that is what is going on repeatedly we would like for them to change their form of leak detection. For most people who cannot get a 0.1 test it usually happens over and over because of high volume. They could choose a better-suited form of leak detection for their facility such as 0.2 test with inventory or whatever it might be so they don't have to change back and forth. Keith Davis asked what would be recommended if high volume is the reason. Mr. Lankford said they could do a CSLD (continuous statistical leak detection) along with inventory, SIR, interstitial monitoring if they have it, but a lot of people have trouble getting a 0.1 test at high volume stores.

165:25-3-6.23(a)(4). **Ms. Atkinson** asked if there would be any consideration for a large facility with multiple sources. If there has ever been a release you're not going to do vapor monitoring. Ms. Lippert said she did not agree with the revision. She said maybe say it is not acceptable at levels above background but to just say there was release is too broad. She likes having the discretion of being able to discuss it with the Compliance staff and ask if it could be done at a location. **Mr. Foster** said the rule is not very clear and asked what is meant by previous release, suspicion of release, confirmed release, there was less than 25 gallons on the ground and a case wasn't open? He would think it should be where a previous release has been confirmed but it is too vague. Mr. Weedn said Salim worked on the rule and we can discuss with him.

165:25-3-6.24. **Ms. Atkinson** said in the past we did the assessment to qualify for vapor monitoring and had to make sure there were a sufficient number of wells and asked if the new language would retroactively affect any of those assessments that were previously performed. Ms. Strickland said they would not be affected only any new ones going forward and asked if she was ok with the rule. **Ms. Atkinson** and **Ms. Lippert** both said they are fine with the rule if it only affects new ones going forward.

165:25-3-6.26. **Ms. Atkinson** asked if these revisions were the same as what was discussed earlier about selecting a primary method of release detection. Mr. Lankford said this was submitted by industry who felt we need to clarify what we accepted. Nothing is being changed but we are clarifying that we accept a 0.1 test every 30 days, 0.2 test has to have inventory along with it, or CSLD has to have inventory along with it.

165:25-18-11(a)(1). **Ms. Atkinson** asked if there was a timeframe needed so people know. Mr. Weedn said there are some things that cannot be corrected, for example notification for a tank tightness test. However, if an NOV is issued on something that can be corrected, there will be a follow-up inspection scheduled on a separate date which will be noted on the NOV form.

Mr. Weedn opened the floor for comments or questions regarding proposed changes in Chapter 26 Aboveground Storage Tanks.

165:26-1-2. **Ms. Lippert** said it was discussed before but asked if everyone was good with adding the transport tank to the definition of aboveground storage tank. **Ms. Strickland** said they have always considered it part of the tank system when it was connected to the tank and there was a release. If it is not connected to the tank and there was a release they would not be eligible.

165:26-2-4. **Ms. Atkinson** asked if common property line meant shared property line. **Mr. Weedn** confirmed that is what it means. **Ms. Strickland** asked if she wanted it clarified or was good with it as it is. **Ms. Atkinson** said it was fine.

Mr. Weedn opened the floor for comments or questions regarding proposed changes in Chapter 27 Indemnity Fund.

165:27-3-1(1). **Ms. Atkinson** asked what is meant by "required modified eligibility" in the rule. **Ms. Strickland** said that started under Brooks Mitchell in 2004 and is the modified application process for suspicion of release cases where consultants get \$500 for the application and the co-pay is invoiced after the SOR closes because it does not go through sub-comp review. If it does become a confirmed release consultants get the other \$500 for submitting the sub-comp records. **Ms. Strickland** asked what the concern was. **Ms. Atkinson** said she didn't know if people knew what modified eligibility is and perhaps a definition was needed. **Ms. Strickland** said we could do that.

Mr. Weedn opened the floor for comments or questions regarding proposed changes in Chapter 29 Corrective Action of Petroleum Storage Tank Releases.

There were no questions or comments regarding Chapter 29.

Mr. Stephenson said the Council would need to make a recommendation to move forward with a rulemaking or have another meeting. **Ms. Strickland** said she would prefer to make changes to the rules and present them to members again at another meeting before a recommendation is made by the Council.

It was agreed the next meeting would be held Monday, October 1, 2018, at 3:00 p.m.

Kathy Lippert made a motion to adjourn and **Deanna Atkinson** seconded it. All members present approved the motion and the meeting adjourned at 3:45 p.m.

ATTESTED:



Susan Adlamini

Acting Minutes Clerk for the Commission

Storage Tank Advisory Council

Notice and Agenda

Oklahoma Corporation Commission
Jim Thorpe Office Building
2101 N. Lincoln Blvd.
Room 105
Oklahoma City, Oklahoma 73105

POSTING DATE: Wednesday, September 19, 2018

MEETING TYPE: Special

MEETING DATE: Monday, September 24, 2018

MEETING TIME: 2:00 p.m.

DIVISION: Petroleum Storage Tank Division

AGENDA:

1. Approval of the minutes from the November 13, 2017 meeting
2. Revised Proposed Rules – Travis Weedn
 - Chapter 5 Rules of Practice
 - Chapter 15 Fuel Inspection
 - Chapter 16 Antifreeze
 - Chapter 25 Underground Storage Tanks
 - Chapter 26 Aboveground Storage Tanks
 - Chapter 27 Indemnity Fund
 - Chapter 29 Corrective Action of Petroleum Storage Tank Releases

POSSIBLE ACTIONS: Discussion/Vote