



# OFFICE OF THE STATE FIRE MARSHAL

## ABOVEGROUND PETROLEUM STORAGE ACT (APSA) ADVISORY COMMITTEE

### DRAFT MEETING MINUTES

**Wednesday, April 3, 2024**

**9:30 AM to 2:30 PM**

CAL FIRE – Office of the State Fire Marshal

715 P Street, 9<sup>th</sup> Floor – Allen Room, Sacramento, California 95814

**Note:** This meeting was held in-person and via teleconference.

#### **Staff Present:**

Jim Hosler, Assistant Deputy Director

Jennifer Lorenzo, Senior Environmental Scientist (Supervisor), Committee Chair

Mary Wren-Wilson, Environmental Scientist

Denise Villanueva, Environmental Scientist

Glenn Warner, Senior Environmental Scientist (Specialist)

Eireann Flannery, Regulatory Analyst

#### **Members Present:**

Aleasha Enciso,\* Southern Region Certified Unified Program Agency (CUPA)

Christina Graulau,\* U.S. Department of Defense (DoD) Liaison

Craig Fletcher, Fletcher Consultants, Inc.

Dante Wiley, Northern California Fire Prevention Officer (FPO)

Devra Lewis, Bay Area Region CUPA, Co-Chair

Eloy Luna, Southern Region CUPA

Jason Rizzi, University of California (UC) Davis Health Fire Marshal's Office

Jeremy Gates, Southern California Edison

Jovan Diaz, Glendale Fire Department

Lori Luces-Nakagawa,\* Pacific Gas and Electric (PG&E)

**Members Present (continued):**

Michael Chilberto,\* Oil Changers  
Mike Huber, DoD Liaison  
Paul McCarty, Northern Region CUPA  
Stacey Miner,\* Walmart  
Veronica Badillo,\* DoD Liaison

**Subject Matter Experts:**

Janice Witul, U.S. Environmental Protection Agency (US EPA)  
John Paine, California Environmental Protection Agency (CalEPA)

**Guests Present:**

Aaron Gao, Santa Barbara County CUPA  
Monica Ronchetti, San Bernardino County CUPA  
Peter Armagost, Bakersfield City CUPA  
Robin Ward, Santa Clara County CUPA  
Sharon Preece, San Diego County CUPA  
Tom Parker, Butte County CUPA  
Victor Morales, El Segundo City CUPA

**Members Absent:**

Chris Reardon,\* California Farm Bureau  
Eric Scott\*, Santa Fe Springs Fire Department  
Greg Matas, Donlee Pump Company  
Kevin Buchan, Western States Petroleum Association  
Mark Taylor, Mosier Bros.  
Peter Ansel, California Farm Bureau  
Yama Noorzai, Central Region CUPA

\* Alternate member

**I. CALL TO ORDER AND INTRODUCTIONS**

- A. The Committee Chair, Jennifer Lorenzo, called the meeting to order at 9:35 a.m. and welcomed everyone to the meeting. Attendees and guests introduced themselves.
- B. Ms. Mary Wren-Wilson conducted the roll call, and it was determined a quorum was not present.
- C. Approval of minutes from previous meeting  
Minutes from the meeting on Wednesday, January 24, 2024, were reviewed. Minor amendments were made. Since a quorum was not present, there was no voting to approve the minutes. The minutes will be voted on in the next meeting.

D. Announcements

The Committee Chair announced Mr. Paul McCarty is now a co-chair for the APSA Technical Advisory Group (TAG). Mr. Tom Parker with Butte County CUPA and Mr. Peter Armagost with Bakersfield City CUPA are now the APSA Issue Coordinators for the CUPA Forum Board.

**II. APSA PROGRAM UPDATES**

A. Regulations

1. Status on current rulemaking - Final Statement of Reasons (FSOR)

The FSOR is complete and will be going through an internal review process. Once the internal review process is complete, the FSOR will be sent to the Office of Administrative Law (OAL). The estimated earliest effective date is August 1, 2024. However, this date is subject to change if review by the Department of Finance is required by executive management.

2. Tank in an Underground Area (TIUGA) Spill Prevention, Control, and Countermeasure (SPCC) Plan template

The committee reviewed and made edits to the draft TIUGA SPCC Plan template based on feedback received.

Title

The word *petroleum* within the phrase ‘Less Than 1,320 gal. *Petroleum* Storage Capacity’ was requested to be changed to *oil*, so it reads ‘Less Than 1,320 gal. *Oil* Storage Capacity’ for consistency with the Federal SPCC rule. [Greater than 1,320 gallons of oil is the minimum threshold under the Federal SPCC rule.]

Mr. Craig Fletcher asked the reason for the change from oil to petroleum. The committee discussed that if a facility has greater than 1,320 gallons of oil and has a potential threat of discharge to navigable water, then the facility cannot use this template. Ms. Devra Lewis stated the comment to change from oil to petroleum came from her, and it was specifically for the third category [of APSA tank facility applicability], since they’re not subject to the Federal SPCC rule, or the facility doesn’t have 1,320 gallons of petroleum. The Committee Chair reminded, when preparing an SPCC Plan, all oils must be taken into consideration in the total storage capacity of the facility, not just petroleum.

Mr. Fletcher wondered who the audience is for the template.

This template is meant for tank facilities that are not subject to the Federal SPCC rule (greater than 1,320 gallons of oil and have potential threat of discharge to navigable water) and they do not have 1,320 gallons of petroleum, but they have a TIUGA per Health and Safety Code (HSC), Section 25270.3(c).

Ms. Robin Ward provided an example of a standard parking garage, and there is only a 500-gallon diesel generator TIUGA. This type of facility will use this template.

Ms. Lewis also suggested removing the threshold and replacing it with the third applicability section in APSA, which is HSC Section 25270.3(c). However, Mr. Jeremy Gates stated, to alleviate questions and confusion, the threshold reference should remain in the title and should reference the oil threshold.

#### Instructions

Mr. Fletcher suggested the template should have additional clarifying statements in the instructions.

Ms. Eireann Flannery asked if the template will be used by less technical audience, or it's just not as common of a form, or both. Mr. Gates replied that it may be a combination of both. The facilities that will be using this template will not prepare full [professional engineer (PE)-certified] SPCC Plans, and the number of these types of facilities are less.

The Committee Chair stated we do not know the number of facilities that may use this template, since the data quality in the California Environmental Reporting System (CERS) for the TIUGA data field is not great. The TIUGA data field has been around in CERS since 2019; the data quality is expected to be better once we have the requirement in place for facilities to enter information into the three APSA data fields and one checkbox in CERS.

Ms. Lewis asked if the first paragraph of the instructions is sufficient.

Mr. Fletcher replied, based on who will be using this template, the template will be used by people that have no understanding of the SPCC rule, such as a building in San Francisco with a diesel fire pump in the basement. They will not be familiar with the details of the SPCC requirements. To make a distinction, Mr. Fletcher suggested calling that out. Also, it should specify that it doesn't apply to certain situations, and they are not allowed to use this

template. Mr. Fletcher was also concerned about the use of oil, since APSA does not have the authority to regulate all oils.

Mr. Gates asked, if you have more than 1,320 gallons of oil, you cannot use this template. Mr. Fletcher replied that would be helpful for the uninformed owner [or operator of a tank facility]. Mr. Gates stated inserting a negative statement within the instructions is likely what Mr. Fletcher was requesting.

Ms. Lewis stated the term “you” should be removed from the instructions. The committee agreed this change will apply throughout the document and be modified accordingly. Additionally, throughout the document, the term petroleum will be changed to oil, if applicable. References to Section 112.6 [of the Code of Federal Regulations (CFR), Title 40, Part 112] was also requested to be removed from the template. [The California Code of Regulations, Division 1] Chapter 15 references will be revised as the correct chapter to reference will likely be chapter 16.

The committee decided to add a statement to clarify the types of facilities that cannot utilize the template.

*This template cannot be used by an owner or operator of a tank facility that meets the criteria as described in HSC [Health and Safety Code] §25270.3(a) and (b).*

The committee discussed the following sentence:

*“You must keep with the SPCC Plan a record of these inspections and tests, signed by the appropriate supervisor or inspector, for a period of three years.”*

Ms. Lewis’ original comment was to remove the word ‘must’ from this sentence. Then, Mr. Gates stated this statement is underground regulations. However, Mr. Fletcher read the SPCC rule, 40 CFR Section 112.7(e), which states that, “You must keep these written procedures and a record of the inspections and test, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years.” Ms. Janice Witul thought the template was for people who didn’t have SPCC Plans. Ms. Ward asked if she was objecting the ‘keep with the SPCC Plan’ section of the statement. This template will be the SPCC Plan for these TIUGA facilities. Ms. Witul then asked how we felt about changing the ‘must’ to ‘shall’.

Ms. Ward asked the difference between ‘shall’ and ‘must’. Chief Jim Hosler replied that ‘shall’ is preferred for legal language as opposed to ‘must’.

After a lengthy discussion on the above sentence [on record of inspections], no changes were made, since the sentence uses the exact same language as the Tier I qualified facility SPCC Plan template [federal template].

Mr. Gates further asked about the regulatory authority for the requirements on the TIUGA template. Certain portions of this template references sections of the Federal SPCC rule. Ms. Lewis then asked the purpose of having this separate template. The Committee Chair replied that HSC Section 25270.4.5(c) explicitly states our office will be preparing a different format for the facilities subject to HSC Section 25270.3(c). The authority to develop this template comes from this section. These facilities can either prepare a plan using the same format as described or as required by HSC Section 25270.4.5(a), which includes a Tier I qualified facility SPCC plan template, a Tier II qualified facility SPCC Plan template, or PE-certified SPCC Plan.

Ms. Flannery added that the Administrative Procedure Act (APA) allows you to incorporate by reference, which is what we're talking about and doing with this TIUGA template. When you incorporate by reference, it's an external document like this template, and it does have the force of regulations. In the regulations, it will say this form is incorporated by reference, including the version of the form. The reason to incorporate by reference is that something may be hard to print or too long to print. In California regulations, you do not want conflicting information with the regulations as written, and you do not want something that is inconsistent. This is not the same as documents relied upon; for example, if you were writing an essay and refer to an argument that someone else made, you would add a footnote. Another person's argument or the information from an external source influenced your thinking. Then you'll present your product based on external source. You relied upon something to come to a certain decision. For purposes of California regulations, 'incorporated by reference' means the standard. The TIUGA has state standards that may or may not be different from the federal standard. Any requirement that needs to meet or exceed or be specific to the state rather than the federal standard should be adjusted in this template. If it doesn't align with our regulations, or if it's not accounted for because it's state specific rather than federal standard, those are all reasons to adjust the template. This template will have the force of regulations. Once this pre-rulemaking process is complete, the regulations will include this version of this document as incorporated by reference. We'll go through the same process as we did for the APSA regulations.

### Page 2

Two phone numbers for the California Governor's Office of Emergency Services State Warning Center are included [to address California release reporting requirements], and both phone numbers are valid.

### Page 3

In the first paragraph on page 3, the applicability criteria was updated and additional references to the APSA statute and regulations were included.

In the first sentence, Section 112.3(g)(1) was removed because it does not apply to a facility using this template. It was replaced with HSC Section 25270.3(c).

*"This template constitutes the SPCC Plan (Plan) for the facility, when completed and signed by the owner or operator of a facility that meets the applicability criteria in ~~§112.3(g)(1)~~ HSC §25270.3(c)."*

In the second sentence, references to the APSA statute (HSC Chapter 6.67) and regulations were added.

*This template addresses the applicable requirements of 40 CFR Part 112, HSC Chapter 6.67 (APSA), and the California Code of Regulations (CCR), Title 19, Division 2, Chapter 15.*

The chapter will be changed since Chapter 15 now contains regulations for a different program.

The third sentence was removed since reference to the Federal SPCC rule is included in a previous sentence. Also, this sentence is not in the Tier I qualified facility SPCC Plan template.

*~~All sections referenced in this Plan are found in 40 CFR Part 112, unless expressly specified.~~*

### Facility Description

No edits were made to the Facility Description section.

### Self-Certification

After discussion, the Section 112.6(a)(1) reference in the title for self-certification was removed. Section 112.6(a) is a Tier I qualified facility requirement, and this template is not for a qualified facility.

*Self-Certification Statement (~~§112.6(a)(1)~~)*

Ms. Ward felt it is helpful to reference citations to assist inspectors in being able to refer to specific regulatory requirements. Mr. Gates added, an example of a new violation could be failure to use the template per HSC 25270.4.5(c). The new section number that will be used to adopt this template will be used as a reference.

In item 1, HSC Division 20, Chapter 6.67 was added for applicability to APSA.

In item 6, 'under Section 112.3(g)(1)' was replaced with 'pursuant to HSC Section 25270.3(c)' since this template is specific to APSA tank facilities with TIUGAs subject to this section.

In item 6a, 'petroleum' will be changed to 'oil', and the threshold is changed to 'less than 1,320 gallons.'

In item 6b, in lieu of the original statement in the Tier I qualified facility SPCC Plan template, insert the following statement including the definition of a TIUGA from the APSA statute.

*"The facility has one or more tanks in an underground area as defined in HSC §25270.2(o)(1)."*

In item 7, the federal template contains a phrase regarding Section 112.9 for produced water and associated piping. This phrase was removed from this template, since APSA does not regulate oil production facilities.

Page 4

There was discussion on keeping the word petroleum, in lieu of oil, in the following statement and removing certain words ('other' and 'among others':

*I also understand my ~~ether~~ obligations relating to the storage of petroleum at this facility, including, ~~among others~~:*

Committee members discussed release reporting requirements under both federal and state requirements. Ms. Witul mentioned, under the federal requirements, there is the "sheen rule." It doesn't have to be a discharge of 42 gallons of oil.



In item 1 on page 4, oil was changed to petroleum to be specific to APSA and the reference to navigable waters or adjoining shorelines were removed from this template [compared to the federal template]. Also, in lieu of the notification statement in the second sentence, it was changed to 'spill/release reporting information is included in this Plan.'

Mr. Gates and Mr. Michael Chilberto both mentioned clarifying the discharge notification in item 1 on page 3. The word 'any' was removed, so that a facility is not reporting a discharge of a teaspoon of petroleum, especially if it does not reach navigable water or adjoining shoreline. To cover the various potential discharge scenarios and accommodate applicable discharge or release reporting requirements at the federal and state level, the committee decided to create a general statement referring to the appropriate procedures for reporting a discharge. There was discussion to change the term discharge to release, but discharge is incorporated in the APSA definition of a release and discharge is consistent with the Federal SPCC Rule.

*1. To report ~~any~~ petroleum discharge to the appropriate authorities in accordance with the applicable federal and state requirements.  
~~Spill/release reporting information is included in this Plan.~~*

For item 2 on page 4, the committee mentioned adding a period at the end of the last sentence.

The committee removed the [40 CFR] Section 112.6(a) reference because now HSC Section 25270.4.5 is referenced. Ms. Ward recommended removing the reference to [40 CFR] Section 112.3, as it pertains to the requirement to prepare [an SPCC] Plan. The document may be used by facilities that are not subject to federal requirements to prepare an SPCC Plan. Instead, HSC Section 25270.4.5 was added since it is the requirement to prepare and implement a plan under APSA, while also following the same format as the Federal Plan. The TIUGA provision in HSC Section 25270.2(o) was also incorporated.

*I certify that I have satisfied the requirement to prepare and implement a Plan under §112.3 and HSC §25270.4.5 and all ~~of the~~ applicable requirements including under §112.6(a) and HSC §25270.2(o). I certify that the information contained in this Plan is true.*

The committee also discussed about the contingency plan within the certification statement, which would have been item 3 on page 4 of this template. The committee determined it was not applicable to this template,

since it is for qualified oil-filled operational equipment per Section 112.7(k) or oil production facility.

In the last certification statement before the owner or operator signature, the committee discussed removing the references to [40 CFR] Sections 112.3 and 112.6 since the preparation of an SPCC Plan using this template is specific to APSA. In lieu of the federal citations, the committee decided to insert the APSA section to prepare and implement an SPCC Plan and a general statement to include all applicable requirements, including the definition of a TIUGA.

*I certify that I have satisfied the requirement to prepare and implement a Plan under ~~§112.3 HSC §25270.4.5~~ and all of the applicable requirements, including under ~~§112.6(a) and HSC §25270.2(o)~~.*

#### Page 5

In the Record of Plan Review and Amendments, there were no comments to the paragraph. Reference to 'petroleum' was highlighted for review and editing, as necessary.

The committee decided to remove the [40 CFR] Section 112.6 reference from the table 1 title, and Ms. Lewis reminded it should also be removed throughout this template. All table titles in this template do not have the [40 CFR] Appendix G reference.

In Table 1, the reference to navigable waters or adjoining shorelines is not on this template. Containers are now TIUGAs. In the last sentence in the first row, 'on tanks in underground area' was changed to 'for tanks in underground area.' In the second row, petroleum and [40 CFR] Section 112.6 reference were highlighted for review and editing, as necessary, later.

#### Page 6

Section 1 header was revised as follows for consistency with the statute:

*~~Petroleum Storage Tanks~~ in Underground Areas (§112.7(a)(3)(i))*

The title for Table 2 was also revised to be consistent with the statute. The term petroleum was removed in the title.

*Table 2 ~~Petroleum~~ Tanks in Underground Areas and Capacities*

In the header for the second column (Type of Petroleum Oil/Product), 'Oil/Product' was removed to keep it general.

In the footnote section, the term ‘container’ was added since the federal rule uses the term bulk storage container, which includes a tank.

*DO NOT include these tanks or containers*

Ms. Lewis suggested having the items listed in bullets instead of having a long paragraph in the footnote.

The HSC citations in the footnote were amended to incorporate tiny TIUGAs, which is found in HSC Section 25270.2(a)(8).

*“Refer to HSC §25270.2(A)(1) through ~~(7)~~(8) and §25270.3(c)...”*

The committee added a total storage capacity amount below Table 2.

*Total Storage Capacity of Tank(s) in Underground Areas:      gallons*

The committee determined moving the footnote paragraph with the list of exclusions in the body of instructions on page 1.

Mr. Jovan Diaz asked a question, “Does the SPCC Plan or regulations include animal fats in what they regulate?” Mr. Diaz has encountered facilities that have a pretreatment unit with animal fat stored in basement areas. The Committee Chair stated, that when determining the type of plan to prepare under the federal rule, animal fats are regulated and must be counted toward the total oil storage capacity. However, due to the tank being a settlement tank in a basement storing animal fat, it would be excluded under APSA.

### Secondary Containment and Spill Control

Spill diversion ponds and retention ponds are not included in the footer for the secondary containment [compared to the federal template]. The committee stopped at the secondary containment portion of the TIUGA template and will resume discussion on the next meeting.

### 3. Other proposals for future rulemaking

#### a. TIUGA

- i. The Committee Chair requested the committee to brainstorm a sentence or two to adopt the TIUGA template and incorporate the document by reference.
- ii. Monitoring Equipment Certification  
Monitoring equipment certification for the “other” TIUGA category [category four TIUGA], as suggested previously by the State Water Resources Control Board. The monitoring could be done by a qualified person. The annual leak certification devices that are being installed for category four TIUGAs should be monitored.

iii. Tiny TIUGA Inspection Record Retention

There is no retention period for inspection records for tiny TIUGA (less than 55-gallon shell capacity) in the statute. For purposes of consistency, a records retention timeframe is needed.

b. Other

i. Sampling Capabilities for UPAs for Closure of Aboveground Storage Tank Systems

The CUPAs expressed interest in having the authority to require sampling when an aboveground storage tank is removed at a facility.

ii. Request documentation as to why required or mandated actions per the formal inspections of tank systems done by a certified inspector are not being followed.

Mr. Fletcher provided more information regarding why the requested documentation is needed. This would mirror American Petroleum Institute (API) 653, which is the inspection standard for field-erected or field-constructed tanks. The API standard calls for in the event that the owner does not take the recommended action, they must provide a written response as to why. CUPA representatives agreed.

iii. Consistency of oil water separators should be regulated similarly like the federal requirements.

B. APSA Basic Inspector Course

Thirteen (13) of the 18 modules have been revised to incorporate amendments to APSA since November 2017. The new course with the revised modules is currently under review. The current training course will continue to run and operate until all current trainees complete the course. Another update to the course is trainees cannot fast-forward through the narration.

**III. NEW BUSINESS**

A. Industry feedback at annual Unified Program training conference

1. Lack of regulatory clarity

a. More education for industry on APSA

The Committee Chair stated our office is in the process of creating webinars and still in the planning stages. The webinars will focus on topics suggested at the industry stakeholder meeting from the last conference. The plan is to provide a webinar each quarter, except for the first quarter of the calendar year.

b. Why can't it just be SPCC?

Mr. Jeremy Gates clarified there is a variety of requirements for APSA compared to the SPCC requirements. Some multi-state corporations are

having difficulties understanding why we can't just follow the SPCC rule and sync with the rest of the country. This issue is not just the APSA program, but all programs in California.

- c. Clarity on whether vegetable and other non-petroleum oils are regulated. These are regulated under the federal SPCC rule. Mr. Gates mentioned this ties in with the lack of agency consistency. There is confusion at both the regulated community and local regulators. Chief Jim Hosler proposed having a webinar discussing APSA vs SPCC to provide clarity.
- d. Lack of clarity on whether 55-gallon containers of oil-based paint qualify as 55 gallons of oil. Ms. Janice Witul stated if a paint is oil-based, whether it causes a sheen or not, it could be an emulsion rather than a sheen. Therefore, yes, the oil-based paint is regulated at the federal level.
- e. Clarity on APSA vs. SPCC for farms This would be a great class at the conference. A farm must do daily inspections under APSA. A while back, a CUPA asked the Committee Chair if a farm facility could opt out of being exempt, then the farm would prepare and implement an SPCC Plan, including monthly inspections etc. instead of daily inspections.
- f. Monthly inspections versus 30-day inspections are sometimes hard to do. The 30-day inspections appear to be more of a problem in the underground storage tank (UST) program, but not really seen in the APSA program.

2. Lack of agency consistency.

Lack of agency consistency amongst inspectors. This could be due to CUPA inspectors inconsistently following the regulations.

3. Unclear electronic reporting process

There are existing multiple resources available on the web to address this.

The Committee Chair requested ideas for CERS NextGen. One, we need to address completely excluded farms. The Committee Chair stated possibly having a flowchart to assist farms. OSFM has a farm flowchart. Any modification in CERS, excluding the help text, requires adoption through a [California Code of Regulations] Title 27 rulemaking.

Second, the APSA question in the CERS business activities section should also be consistent with the statute. Currently, the question only addresses two types of tank facilities applicable to APSA.

Lastly, the character length for the TIUGA data field is currently set at a maximum of five characters. The five-character field would be reduced to

three or four characters long. The committee will discuss the amount in future meetings.

#### **IV. MEMBERS ORGANIZATION UPDATES**

##### **A. CUPAs**

Bay Area Region: None

Northern Region: None

Central Region: None

Southern Region: None

##### **B. FPO and Other Fire Service: None**

##### **C. US EPA: None**

**D. STI/SPFA:** The next training will be held October 21-25, 2024, in Long Beach. There are new editions of the SP001 and SP031 standards, which were published in February. A free webinar will be held on June 13, 2024. STI/SPFA will provide an update of the two standards. Mr. Craig Fletcher added that the new inspection checklists are available at the STI/SPFA website. The inspection checklists include the aboveground storage tank record. Mr. Fletcher encourages those individuals who write SPCC Plans to include the AST record in the SPCC Plans, because that helps document the category of a tank and provides other useful information.

##### **E. APSA TAG: None**

##### **F. DoD: None**

##### **G. Industry, Farm, and Other Members: None**

#### **V. OPEN FORUM AND PUBLIC COMMENT**

No discussion or public comments.

#### **VI. SCHEDULE NEXT MEETING AND ADJOURN**

The Committee Chair will send out a “Doodle” poll to the members to determine the date for the next committee meeting.

The Committee Chair requested to adjourn the meeting. Mr. Jason Rizzi motioned to adjourn the meeting and Mr. Jeremy Gates seconded the motion. All other committee members that were present were in favor and none opposed.

The meeting was adjourned by the Committee Chair at 2:32 p.m.