



OFFICE OF THE STATE FIRE MARSHAL

ABOVEGROUND PETROLEUM STORAGE ACT (APSA) ADVISORY COMMITTEE

DRAFT MEETING MINUTES

Wednesday, January 24, 2024

9:30 AM – 2:30 PM

CAL FIRE – Office of the State Fire Marshal

715 P Street, 9th Floor – Allen Room, Sacramento, California 95814

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

Program Staff Present:

Jim Hosler, Assistant Deputy Director

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

Mary Wren-Wilson, Environmental Scientist

Denise Villanueva, Environmental Scientist

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 Officers (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

Jovan Diaz, Glendale Fire Department

Kevin Buchan, Western States Petroleum Association (WSPA)

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

Michael Chilberto, Oil Changers

Mike Huber, DoD Liaison

Veronica Badillo*, DoD Liaison

Subject Matter Experts:

Janice Witul, U.S. Environmental Protection Agency (US EPA)
Joe Mentzer, Steel Tank Institute (STI)/Steel Plate Fabricators Association (SPFA)
John Paine, California Environmental Protection Agency (CalEPA)
Steve Pollock, STI/SPFA
Steven Gailey, CalEPA

Guests Present:

Andrea Torrez, CAL FIRE
Erica Olaguez, UC Davis Health
Hannah Goin, CAL FIRE
Jena Garcia, CAL FIRE
Jose Sanabria, CAL FIRE
Robin Ward, Santa Clara County Environmental Health CUPA
Peter Armagost, Bakersfield City Fire Department CUPA
Roxana Ramirez, Metropolitan Water District of Southern California
Thomas Parker, Butte County Public Health Department CUPA

Members Absent:

Chris Reardon*, California Farm Bureau
Eric Scott*, Santa Fe Springs Fire-Rescue
Jeremy Gates, Southern California Edison
Greg Matas, Donlee Pump Company
Mark Taylor, Mossier Bros
Stacey Miner,* Walmart

*Alternate member

I. Call to Order and Introductions

- A. Committee Chair, Jennifer Lorenzo, called the meeting to order at 9:31 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 that a quorum was present at 9:55 a.m.
- C. Approval of Minutes

Minutes from the meetings on July 31, 2023, and June 20, 2023, were reviewed. Ms. Devra Lewis motioned to approve the June 2023 minutes as amended, and Mr. Jovan Diaz seconded the motion. All other committee members in attendance were in favor, DoD Liaison concurred, and none opposed.

Mr. Craig Fletcher motioned to approve the July 2023 minutes as amended, and Mr. Jason Rizzi seconded the motion. All other committee members in attendance were in favor, DoD Liaison concurred, and none opposed.

D. Announcements

Chief Daniel Berlant was appointed by the Governor on October 6, 2023, as the State Fire Marshal.

Mr. Jason Rizzi represents other fire service, specifically UC Davis Health Fire Marshal's Office.

All OSFM webpages transitioned to a new platform mid-November last year.

II. APSA Program Updates

A. Regulations

1. Review public comments received

The committee reviewed and discussed comments received during the 45-day public comment period that began in early November 2023.

Public comment – Statute will mandate local adoption of regulations.

The committee did not concur with the comment. The APSA statute does not drive local adoption of regulations, but requires OSFM to develop regulations and local agencies to enforce those regulations.

Public comment – “Will this apply to aboveground oil refineries?”

Yes. Most refineries are applicable under APSA.

Public comment – “Will it have an effective date for new work under construction or will it require retrofitting existing facilities already under operation?”

The APSA regulations are not construction standards; construction standards exist in other codes or regulations.

Public comment – section 2310

“Why use may? Does this mean it is still optional for the CUPAs to enforce? I thought there was a push to make these inspections mandatory.”

The Initial Statement of Reasons (ISOR) provides a detailed explanation to these questions.

Public comment – section 2340

“Why would an open or existing violation for more than 6 years or 2 inspections be allowed?”

The committee provided additional feedback to be included in the Final Statement of Reasons (FSOR) to further clarify the comment.

This section is not about allowing violations to remain open for an extended period of time. This section focuses on the Unified Program Agencies (UPAs) to take formal enforcement action, since there is currently no requirement in Unified Program statute [Health and Safety Code Chapter 6.11] or regulation [California Code of Regulations, Title 27] to require UPAs to take formal enforcement action within a certain time period. There is a requirement in the underground storage tank (UST) regulations for UPAs to take enforcement action. The time frame considers all inspection cycles that UPAs may have.

Public comment – section 2350

A comment asked for the Spill Prevention, Control, and Countermeasure (SPCC) Plan to be made available during after-hours spill response. The committee stated the comment is not relevant or not applicable. The SPCC Plan does not apply to UPAs during after-hours spill response. The SPCC Plan is not an emergency response document for UPAs to access during an emergency. The facility staff should know the emergency elements of the SPCC Plan.

Public comments – section 2360

“How long does the UPA have to review?”

The committee determined this is out of the scope of these regulations. The review time is better addressed under the Unified Program statute or regulations since it is not APSA program specific. The only Unified Program element with a time frame is the tiered permits (45 days) under the hazardous waste generator program requirements. An UPA's data management procedure or Inspection and Enforcement Plan may specify the time frame for review. It would be best to continue to provide UPAs the flexibility.

“How does the UPA notify? Via CERS [California Environmental Reporting System] electronic notification or by an inspection report [or] both?”

The method of notification is under the discretion of the UPA and should be documented, so that the facility is aware of issues or deficiencies. Examples of notification include a response or action by the UPA in CERS (not

accepted) along with regulator comments to describe any issues or deficiencies, an inspection report, an email notification, etc.

“Is the submitted corrected information need to be reviewed by the UPA?”

Reviewing the resubmittal is standard due diligence for the UPAs to ensure compliance.

Public comments – section 2370

“Is there a standard on who can conduct the training? What kind of accreditation does the trainer need?”

The committee discussed there is no current standard on who can conduct training or the qualifications for the trainers. With the exception to the UST program, not having a standard on who can conduct the training is consistent with the other Unified Program elements.

“Does the training need to be spread out or can it be done at one 6 hour training?”

The training can be completed in a single session of six hours or can be spread out over multiple sessions. This is addressed in the ISOR.

Ms. Janice Witul mentioned that US EPA Oil Program inspectors are required (by policy) to have 4 hours of Oil Program specific training every year.

The Committee Chair asked if there were additional comments.

Mr. Kevin Buchan had comments on sections 2290(a), 2340(d), 2290(c), and 2330(a)(7).

2290(a) – Mr. Buchan commented the Health and Safety Code (HSC) defines a minor violation, but based on feedback from WSPA members, the APSA regulations are defining a violation that is not a minor violation. WSPA members objected to this section, and it seems to be stepping outside of what the HSC states. There are circumstances that may come up and facts could play a role with an inspecting UPA or CUPA. WSPA members want this provision deleted, since it extends the definition of a minor violation.

The committee reviewed and extensively discussed the definition of minor violation under HSC, Chapter 6.11, Section 25404. The HSC definition of a minor violation explicitly includes criteria that would not be considered a minor violation. The exclusions (non-minor violation criteria) automatically classify the violation to non-minor. The definition of minor violation is not being redefined in the APSA regulations; instead, this section focuses on the non-minor side.

This proposal is clarification for UPAs. Also, as mentioned by Ms. Devra Lewis, so a CUPA does not receive a deficiency from a state agency during a CUPA evaluation assessment for misclassifying certain violations as minor. Resulting in an economic benefit [from noncompliance] classifies the violation of repurposing UST as an aboveground storage tank (AST) as non-minor, under HSC. The two other criteria under HSC that may also classify the violation of repurposing UST as AST as non-minor is if it results in injury to persons or property, or if it results in an emergency response [from a public safety agency]. Fire code prohibits repurposing UST as an AST. This regulation provides examples of non-minor violations based on the criteria specified in HSC.

2340(d) – Failure to prepare an SPCC Plan shall not be classified as a minor violation. Mr. Buchan commented that WSPA members request this section to be deleted.

The committee stated at the federal level, not having an SPCC Plan cannot be classified as a minor violation. This is consistent with US EPA, since there is a federal civil penalty policy that explicitly shows not having an SPCC Plan is considered either moderate non-compliance or major compliance; it is not co.

2290(c) – Mr. Buchan commented there's a discussion about a railcar being used as a stationary tank. WSPA members have identified that stationary tank is not defined in the regulation. Mr. Buchan clarified WSPA members use railcar for temporary storage of liquified petroleum gas (LPG). They would like to create in the regulation or revised regulation the definition of stationary tank or work with CAL FIRE on guidance.

The Committee Chair stated the term "stationary" is not defined in the regulations, but the term is mentioned in the definition of a tank in an underground area (TIUGA) in the APSA statute. TIUGAs were previously regulated under the UST program; these are all tank systems that are stationary or do not move. LPG is not regulated under APSA. The Final Statement of Reasons (FSOR) will include that APSA does not regulate LPG.

2330(a)(7) – The language states training and discharge prevention briefings are conducted and documented for a minimum of three years, but you would not conduct training for three years. The documentation would be held for three years. WSPA members requested clarification.

The committee discussed that documentation related to the individual training sessions that have taken place be retained for three years. These regulations do not change the federal training requirements; this section requires training to be documented as evidence for compliance with training requirements. The proposed three-year documentation retention is intended to ensure consistency with the general retention timeframe for documentation or recordkeeping requirements under the federal SPCC rule.

2. FSOR

The FSOR will include additional text to address comments that were discussed today.

The remaining discussion with the committee is to confirm whether other alternatives that came up during these last few meetings are not any better than what we have now. Does the committee feel comfortable with moving forward with the language of the regulations as is? Summarizing the APA, if there are no alternatives considered by the agency that would be more effective in carrying out the purpose for the regulation which is proposed, would be as effective and less burdensome to effective private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective, and implementing the statutory policy or other provision of law? Other than the comments about the expansion of the law, are there any other points or comments that rise to the surface for anyone? Does the regulation present information that is readily understandable by those directly affected? Part of our goal is to make this regulation readable and plain language.

Duplication of a statute or regulation was necessary in certain situations for clarity. If there any amendments to the statutes or regulations that were duplicated, then a section 100 will be necessary for non-substantive changes. Mr. Steven Gailey stated there will be amendments to the California Code of Regulations, Section 15110. Section 15110 includes the formal enforcement and routine inspection, which are duplicated in this regulation for clarity.

The Committee Chair asked for consent from members to move the regulations forward as-is to OSFM. All members that were in attendance, except one member, concurred with the express terms as they are. All committee members, except one member, concurred with the comments reviewed and the feedback provided. Mr. Kevin Buchan declined to concur.

3. Effective date

The rulemaking package could be effective as early as May if the Office of Administrative Law (OAL) does not have comments. If there is a 15-day

comment period, then the earliest effective date will be by fall. This whole process started on November 3, 2023. The Committee Chair stated we have to complete this process within a year, otherwise we have to withdraw the package.

There is additional paperwork to be completed internally before submitting the rulemaking package to OAL. The real content is based on the committee's discussion on the public comments today.

OAL has 30 business days (or 42 to 43 calendar days) to review the rulemaking package. During their review, they may find something that's not compliant with the Administrative Procedure Act (APA), or justifications are not strong enough. They may feel there are alternatives that were proposed in our documents, and we didn't thoroughly consider. Part of their reviews take the perspective of a stakeholder; they are an advocate for the stakeholder. If OAL sees something during their review, then we have the option to pull the package, make the necessary changes, and then put it out for another 15-day comment period.

There are no big policy changes discussed so far.

If there are no changes to the express terms or ISOR at the conclusion of today's meeting, then discussions from today will be summarized and added to the FSOR. Then OSFM will submit the rulemaking package to OAL. However, if OAL sees something during their review, then the package can come back to us.

If there's a change and we have to another public posting, then we would post an addendum to the ISOR. Initially, you start out with an ISOR in the first public comment period. If you have another public comment period, you do an addendum to the ISOR. The wrap-up is the FSOR, which is not publicly posted until after the OAL review. The FSOR becomes available in perpetuity, and it is required to be maintained on the web for reference in the future.

4. TIUGA SPCC Plan template

The Committee Chair stated the template will be discussed in the next meeting; it will be in a separate rulemaking.

B. Online Basic Inspector Training

The revision to the online APSA Basic Inspector Training course is still ongoing. Out of the total 19 chapters, there are 18 SCORMs [Shareable Content Object Reference Models] or modules. A total of 13 chapters have been submitted to our vendor for revisions, including amendments made to APSA [since November 2017]. The revised chapters are currently undergoing a QA/QC process and

should be finalized within a few weeks. Any regulations that are adopted and affect the online training course content will require a future revision to the course.

III. New Business

The CUPA conference will be held at the end of February 2024 in Burlingame. Many industry stakeholders wanted more training. This conference would provide several training opportunities on APSA and the other Unified Program elements.

IV. Members Organization Updates

A. STI/SPFA

STI/SPFA will hold an SP001 AST Inspector Training Course on March 25-29, 2024, in San Bruno. Another SP001 AST Inspector Training Course will be held in October 2024 in Long Beach.

Mr. Steve Pollock stated the new edition of the standards SP001 and SP031 will be published soon. They received some comments. There will be a meeting in February one last time to finalize and wrap things up. Updates will be discussed at the upcoming conference, such as updates to the checklist. Mr. Pollock clarified the SP001 is the inspector certification standard and how to inspect ASTs [generally shop-fabricated]. It includes the roles for owners and operators and roles for certified inspectors. The SP031 is the repair standard [generally for shop-fabricated ASTs].

B. CUPAs

Bay Area Region: None

Northern Region: None

Central Region: None

Southern Region: None

C. FPO/Other Fire Service: None

D. US EPA: None

E. CalEPA: None

F. DoD: None

G. Industry and Other Members

Mr. Kevin Buchan wanted to thank everyone for a very productive and professional dialogue on WSPA's concerns. Mr. Buchan appreciates that and just wanted to commend the group for their professionalism.

H. APSA Technical Advisory Group: Next meeting will be held on April 9, 2024.

V. Open Forum and Public Comments

None

VI. Schedule Next Meeting and Adjourn

The committee decided to have the next meeting on April 3, 2024.

The Committee Chair requested to adjourn the meeting. Mr. Jason Rizzi motioned to adjourn the meeting and Ms. Devra Lewis 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 2:18 p.m.