



OFFICE OF THE STATE FIRE MARSHAL (OSFM) ABOVEGROUND PETROLEUM STORAGE ACT (APSA) ADVISORY COMMITTEE

DRAFT MEETING MINUTES

Tuesday, October 29, 2024

9:30 AM – 2:30 PM

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

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

Staff Present:

Jennifer Lorenzo, Senior Environmental Scientist (Supervisor), Committee Chair
Wendy Collins, Division Chief, Pipeline Safety & 'CUPA' Programs
Denise Villanueva, Environmental Scientist
Mary Wren-Wilson, Environmental Scientist

Members Present:

Aleasha Enciso,* Southern Region Certified Unified Program Agency (CUPA)
Anthony McIntyre,* Bay Area Region CUPA
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
Greg Matas, Donlee Pump Company
Jason Rizzi, University of California Davis Health Fire Marshal's Office
Jeremy Gates, Southern California Edison
Jovan Diaz, Glendale Fire Department
Michael Chilberto, Oil Changers
Michael Huber, Department of Defense (DOD) Liaison
Paul McCarty, Northern Region CUPA
Peter Ansel, Farm Bureau

* Alternate member

Subject Matter Experts:

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

Guests Present:

Tom Parker, Butte County CUPA
Erin Thomas, San Diego CUPA
Ashley Adami, Condor Earth and Environmental Consulting
Robin Ward, Santa Clara County CUPA
Daniel Yniguez, Los Angeles County Fire CUPA

Members Absent:

Kevin Buchan, Western States Petroleum Association (WSPA)
Yama Noorzai, Central Region CUPA
Mark Taylor, Morrison Bros.

1. CALL TO ORDER AND INTRODUCTIONS

A. Roll Call and Determine Quorum

Committee Chair, Jennifer Lorenzo, called the meeting to order at 9:33 a.m.
Attendees and guests introduced themselves.

Ms. Mary Wren-Wilson conducted the roll call, and it was determined that a quorum was not present.

B. Approval of Minutes

i. Approval of minutes from January 2024

At 9:56 AM, the Committee Chair, Jennifer Lorenzo, announced that there is a quorum. The committee voted on the January meeting minutes. Mr. Jason Rizzi motioned to approve the minutes. Mr. Michael Chilberto seconded the motion. All other committee members who were present were in favor, none opposed.

ii. Approval of minutes from April 2024

Mr. Craig Fletcher motioned to approve the April 2024 meeting minutes. Mr. Greg Matas seconded the motion. All other committee members who were present were in favor, and none opposed.

C. Announcements

i. OSFM Staffing

OSFM has an opening for a Senior Environmental Scientist-Specialist position in the 'CUPA' program and will be conducting interviews. OSFM hopes the position will be filled by November 2024.

ii. New Members

The Committee Chair announced that there are open positions on the committee. There are primary and alternate positions available.

Alternate positions for all CUPA regions are available. There are also vacancies for the primary and alternate positions for the Southern Region Fire Prevention Officers. Also, there is a vacancy to represent the tank manufacturers. Mr. Greg Mattas suggested a few tank manufacturers that could be interested in the vacancy. The Committee Chair also mentioned an alternate position for private consulting is available.

2. APSA PROGRAM UPDATES

A. Committee Charter

i. Bagley Keene Open Meeting Act

The APSA Advisory Committee was established due to Assembly Bill (AB) 1566 (Stats. 2012). AB 1566 authorized the OSFM to oversee the APSA program and it required OSFM to establish an advisory committee. Hence, the committee is subject to the Bagley Keene Act. The Bagley Keene Act gives people the right to observe and participate in the meetings and decision-making of state bodies.

The Committee Chair reviewed options for meeting attendance that abide by the Bagley Keene Act. First, there is an option for fully in-person meeting with state body having discretion to provide a teleconference or virtual link by the public and staff. The second option is a traditional teleconference meeting. Committee members may participate from any meeting location remotely; however, each teleconference location must be listed on the meeting notice online. Each remote meeting location by a voting member must be accessible to the public and comply with Americans with Disabilities Act (ADA) requirements. Mr. Jeremy Gates added that at each teleconference location, there must be audio capability for all attendees. Chief Wendy Collins inquired, "What if you work from home?" The Committee Chair responded that one may not join the meeting from home unless their home is open to the public.

Option three is a teleconference meeting. A teleconference meeting requires the majority to meet at a single location. Additional members of the advisory body may join remotely. A quorum must be present at a single location. The teleconference option is only allowed for one year. Mr. Michael Chilberto

asked if the committee could resubmit an annual request to continue hosting teleconference meetings. The Committee Chair informed everyone that the statute states the teleconference option is only allowed until January 1, 2026.

The committee evaluated and discussed which meeting option would be most effective and beneficial for members to attend. A traditional meeting would require a majority of committee members to gather at a single location. The Committee Chair emphasized the importance of encouraging participants to fill alternate member vacancies to ensure they may attend [when the primary voting member is unable to attend] and contribute to achieving a quorum.

Mr. Gates proposed that the Committee could use the CUPA Forum Trust to assist CUPA Forum members financially in attending the meetings. Mr. Eloy Luna expressed that it is helpful the CUPA Forum pays for travel time to attend meetings.

ii. Review Charter

The committee began reviewing member commitments. The Committee Chair requested that the issue coordinator be a voting member on the committee, since they are considered a co-chair. Furthermore, the committee is now allowing CUPA region representatives to act as co-chairs. Now, an APSA Issue Coordinator or CUPA region representative can act as a co-chair.

The committee reviewed the previous changes to the charter. The last change addressed the frequency of meetings, which are now held biannually or as needed.

The Committee Co-Chair suggested changing the meeting frequency to annual, allowing for greater flexibility in scheduling. The committee kept the original meeting frequency of biannually or as frequently as necessary.

The Committee Chair asked the committee to vote on the changes to the member commitments section. Mr. Gates motioned to approve the changes. Mr. Michael Chilberto seconded the motion. The rest of the committee members who were present were in favor, and none opposed.

B. Regulations

- i. Status on Current Rulemaking – Final Statement of Reasons (FSOR)
The Committee Chair announced the APSA regulations FSOR was submitted to the Office of Administrative Law (OAL) in July 2024. After the OAL review was done, modifications were needed. There was a 15-day comment period with the modified text of the regulations. OSFM accepted comments until after the 15-day comment period. The APSA regulations package will be reviewed by the State Fire Marshal and then submitted to OAL.

- ii. Tanks in an Underground Area (TIUGA) Spill, Control, and Countermeasure (SPCC) Plan
The Committee reviewed and made edits to the draft APSA TIUGA SPCC Plan Template.

TIUGA – Section 112.6(a)(1) Preparation and Self Certification of the Plan:

A question presented at the last meeting was, what are the options for SPCC Plans for TIUGA facilities? The Committee Chair advised that the facility may use the TIUGA SPCC Plan template that is being developed and will be adopted or follow what is required in Health and Safety Code (HSC) Section 25270.4.5(a). A facility may not make its own template; the facility must use the template that will be adopted.

The committee began reviewing the APSA TIUGA Regulations Table document and discussed the technical requirements outlined in HSC 25270.2(o), specifically regarding the direct viewing of piping systems. The TIUGA SPCC Plan template was developed based on the Tier I Qualified Facility SPCC Plan template, which is adopted in the Federal SPCC rule. However, the technical requirements for TIUGA are not included in the Federal Tier I Qualified Facility SPCC Plan template. Therefore, these requirements must be addressed in the regulations. The committee needs to decide whether to incorporate these technical requirements into the TIUGA SPCC Plan template.

The Committee Co-Chair voiced concern about including the direct viewing requirements that the interstitial space containment performed on the tank is not in the definition of a TIUGA.

The committee reviewed the title of the TIUGA SPCC Plan template. The title is below.

Spill Prevention, Control, and Countermeasure Plan Requirements for a Tank Facility with Tank(s) in an Underground Area and Less Than 1,320 Gallon Oil Storage Capacity.

A title was edited to incorporate the term oil and to reflect a TIUGA that is subject to APSA as specified in HSC Section 25270.3(c)(1) and (c)(2).

The Committee Chair announced that the terms 'Tier I' and 'Tier II Qualified Facility' will be removed. Instead, these terms will be replaced with 'TIUGA tank facilities' since 'Tier I' and 'Tier II' are not in APSA. Additionally, these

TIUGA tank facilities [with less than 1,320 gallons of oil] do not meet the definition of a qualified facility.

The Committee Co-Chair inquired why a TIUGA [tank facility subject to HSC Section 25270.3(c)] does not meet the qualified facility criteria, since the qualified facility criteria does not have a minimum threshold. The Committee Co-Chair added that specifying the limit of 1,320 gallons of oil in the title, it excludes facilities that no longer meet the qualified facility criteria and, therefore, must prepare a professional engineer (PE)-certified SPCC Plan.

[The Federal SPCC rule applies to a facility, including a qualified facility, that stores more than 1,320 gallons of oil.] The Committee Chair clarified that a TIUGA tank facility [with less than 1,320 gallons of petroleum] must have at least one 55-gallon petroleum tank located in a basement to be subject to APSA and is eligible to prepare an SPCC Plan using an alternative format adopted by OSFM, or comply with the latest requirements of the SPCC rule by preparing a self-certified SPCC Plan or PE-certified SPCC Plan [as specified in HSC Section 25270.4.5(a) and (c)].

The next change involves spelling out the ampersand as "Section" to ensure consistency with other program regulations. Additionally, references to "oil," as defined in the Code of Federal Regulations (CFR), Title 40, Part 112, Section 112.2, have been changed to "petroleum," as defined in HSC 25270.2(h).

Another change is that the template no longer uses the term "you"; instead, it uses "tank facility," "owner," or "operator." This adjustment aligns with the terminology used in the APSA statute and program regulations.

The committee reviewed the following:

'To complete the template XX section of these regulations, the owner or operator must certify that...'

Mr. Paul McCarty stated that it (40 CFR 112.6(a)(1)) addresses self-certification and states owner/operator. Mr. McCarty asked, 'Does that mean that somebody besides the owner/operator can sign this?' Previously, the statement was worded, *'To complete the template XX section of these regulations, you must certify that...'* Mr. McCarty added, 'you' in the statement insinuates that 'you' are the person certifying, whereas using the term owner/operator insinuates that the person certifying is not the owner or operator. Mr. McCarty suggested removing the term preparation from the subsection title. The Committee Chair responded, the title dictates to prepare

a plan. Chief Wendy Collins proposed (a)(1) to address preparation and (a)(2) to address self-certification of the SPCC Plan.

The Committee Co-Chair suggested removing the word 'self' since the paragraph following the subsection specifies options on who can certify the SPCC Plan. Several committee members agreed. The committee removed 'self' from the subsection.

Mr. Jason Rizzi suggested adding 'authorized representative' as an option alongside the terms 'owner or operator.' The Committee Chair then asked Ms. Janice Witul to clarify the obligations of the individual certifying an SPCC Plan and to provide information on who typically certifies Tier I Qualified Facility SPCC Plan templates. Ms. Witul explained, the individual certifying a Tier I Qualified Facility SPCC Plan template should be the owner or operator, not a third party. Ms. Witul added the individual who visits the facility should be the owner or operator, not their agent. The committee did not add 'authorized representative' to the subsection paragraph.

The Committee Co-Chair inquired about the inclusion of the term 'produced water'. The Committee Chair clarified that the note regarding produced water was included to explain that the term will not be included in the draft regulations. The Committee Chair explained that TIUGA tank facilities are not extraction facilities, so containers for produced water and any associated piping are not required. Thus, there is no need for reference in the APSA regulations.

TIUGA – Technical Amendments Section 112.3(a)(2):

The technical amendment section refers to discharges as described in 40 CFR Section 112.1(b). These discharges pertain to navigable waters along adjoining shorelines. The Committee Chair inquired whether the committee preferred to retain the reference to section 112.1(b) in the technical amendments section. All committee members agreed that the reference is unnecessary, as proximity to water is not a factor for being subject to APSA. The Committee Co-Chair suggested replacing the term 'discharge' with 'release' to be consistent with the APSA statute. The committee changed 'discharge' to 'release' with reference to HSC Section 25270.2(j).

TIUGA – 112.6(a)(1) Non-Substantive Modification Technical Amendments:

Section 112.6(a)(1) includes a reference to 40 CFR112.6(a), Tier I Qualified Facility Plan. The text currently does not include 40 CFR in the reference. The Committee Chair included 40 CFR before 112.6(a) for proper citation. The

Committee also included the 40 CFR reference for Sections 112.3(d) and 112.8.

TIUGA – Section 112.6(a)(3) Plan Template and Applicability Requirements:

The committee reviewed the statement below.

“This TIUGA template has been developed to meet the requirements of Health and Safety Code Chapter 6.67 and 40 CFR Part 112.”

Ms. Rob Ward pointed out that the statement implies the TIUGA template was developed to comply with certain sections of the federal code. Ms. Ward suggested adding the term ‘applicable’ before ‘requirements’, as not all APSA or SPCC rule requirements apply to a TIUGA facility. Ms. Ward also recommended removing the statement, *“When completed and signed by the owner or operator, this template may be used as the SPCC Plan.”*, explaining that it could lead owners or operators to believe that the TIUGA template is suitable for any facility, even though it is not a Tier 1 Qualified Facility SPCC Plan template. The Committee Chair responded by clarifying that the template will only be utilized by owners or operators who meet the specified requirements, preventing facilities not meeting the criteria from using the TIUGA template for other types of facilities.

TIUGA – Section 112.6(a)(3)(i) Plan Template and Applicability Requirements - Failure Analysis in lieu of the Requirements:

The committee reviewed the statement below.

“(i) Failure analysis in lieu of the requirements in Section 112.7(b). Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other source of discharge) include in the SPCC Plan a prediction of the direction and the total quantity of petroleum which could be discharged from the tank facility as a result of each type of major equipment failure associated with a TIUGA.”

Mr. Gates suggested removing the phrase “include in the SPCC Plan,” as the template is not an actual SPCC Plan; it is a TIUGA SPCC Plan Template. Ms. Ward agreed with Mr. Gates. The Committee Chair explained that the statement implies the existence of an SPCC Plan for that facility. Mr. Mike Huber concurred with the Committee Chair, stating that the template should closely align with the qualified facility SPCC Plan templates whenever possible. The Committee agreed to revisit this discussion.

*TIUGA – Section 112(a)(3)(iii) Plan Template and Applicability Requirements
– Overfill Prevention in lieu of the Requirements:*

Ms. Ward recommended including the reference to 40 CFR for Section 112.8(c)(8). The committee included the 40 CFR reference.

C. Training/Outreach

i. Online APSA Basic Inspector Training

The Committee Chair announced that the online APSA Basic Inspector Training course has been updated, with 13 out of 18 revised modules. The updated course went live in May 2024. From April 2024 to October 2024, 21 individuals completed the course and passed the final exam.

ii. Webinars

OSFM has been hosting periodic webinars. In June, OSFM held a webinar focused on APSA petroleum. Additionally, OSFM hosted a webinar on APS and farms for the Farm Bureau. OSFM plans to host a webinar in January 2025 that will cover California Environmental Reporting System (CERS) submittals.

iii. 2025 CUPA Conference

The Committee Chair announced that the CUPA conference will be held in Anaheim at the Marriott Convention Center. The classes are all Unified Program related. In addition, there will be soft skill sessions offered.

Mr. Joe Mentzer confirmed Underwriters Laboratories (UL) and other STI/SPFA guests will be joining the conference.

The Committee Chair shared information about the sessions that will be offered at the 2025 CUPA conference. One session will focus on "Weird Oils" (petroleum and oil) and will be presented by Mr. Steve Lichten. Mr. Craig Fletcher will present on complex generators. Mr. Earl Crochet, Mr. Mentzer, and the STI/SPFA team will cover several topics related to tanks. Mr. Jeremy Gates will lead a session on APSA exclusions. Additionally, there will be a panel session featuring subject matter experts. Several sessions will also address SPCC Plans.

3. New Business

A. State Surcharge

The Committee Chair presented the charter. The charter was last revised in December 2020. There were no changes to the purpose and goals section. Below Objectives, Item 2, the committee decided to modify "Establish surcharge" to "Provide recommendations on the state surcharge".

The Committee Chair asked Mr. John Paine when the committee would need to submit a change to the CUPA surcharge to ensure the surcharge is incorporated into the California Code of Regulations (CCR) Title 27 rulemaking. Mr. Paine responded that the surcharge rulemaking is different than the typical CCR Title 27 rulemaking. The surcharge rulemaking goes through OAL, with a 30-day comment period. The surcharge change may be adopted anytime. If the surcharge is adopted outside the fiscal year cycle, the CUPA has 60 days from when the surcharge becomes effective to collect the change in surcharge fees. The surcharge would have to be on April 1 to make it effective at the beginning of the fiscal year. The rulemaking package would need to be given to CalEPA by the end of the calendar year to be in by April 1.

A workload analysis will need to be conducted, and a budget change proposal would have to be submitted to the Department of Finance. The change would increase funding resources as well as authority. The scientists' union, California Association of Professional Scientists (CAPS), joined the United Auto Workers (UAW) and was able to ratify their contract, resulting in up to a 20percent salary increase. The committee will continue this discussion at the next meeting.

B. CERS

OSFM previously requested feedback on how to address the APSA Business Activities question in CERS since the question doesn't address the threshold for APSA conditionally exempt tank facilities. Please notify the Committee Chair if the committee has suggestions for addressing the Business Activities question in CERS.

Mr. Paine stated that changes to the Business Activities page will need to be submitted by January 2025.

4. Members' Organization Updates

A. CUPAs: None

B. Fire Service: None

C. US EPA

Ms. Janice Witul had no updates; however, she reminded that US EPA is "hands off" farms.

D. STI/SPFA:

An inspector training course was held in Long Beach during the week of October 21, 2024. UL 142 is going through an update.

E. Industry: None

F. APSA Technical Advisory Group (TAG)

There will be a new APSA TAG co-chair alongside Mr. Paul McCarty.

5. OPEN FORUM AND PUBLIC COMMENT

None

6. SCHEDULE NEXT MEETING AND ADJOURN

The Committee Chair will send out a poll to the members to determine the best available date for the next committee meeting.

The Committee Chair requested to adjourn the meeting. The Committee Co-Chair motioned to adjourn the meeting and Mr. Dante Wiley seconded the motion. All other committee members that were present were in favor and Mr. Jason Rizzi opposed.

The meeting was adjourned by the Committee Chair at 1:57 p.m.