

**ASTSWMO Annual Meeting
Kansas City, Missouri**

Meeting Summary

Tuesday, October 24, 2006

Agenda

1:45 - 5:15 pm **Tanks Session: Current Issues**
Moderated by Dick Swanson (GA), Chair, Tanks Subcommittee

State UST and LUST managers will discuss current issues, including:

- UST: General impact of new UST compliance mandates contained in the Energy Policy Act, including resources and developing State authority;
- LUST: Potential of State LUST programs coordinating with Brownfields Voluntary Cleanup Program (VCP) counterparts to encourage the use of available resources to facilitate the "petroleum provisions" of the Brownfields law;
- Impact of LUST cleanup goals for State Programs;
- State Funds: Discussion of logistics for 2007 State Fund Administrators Conference, including finalizing call for abstracts.

Meeting Notes

The meeting began at 1:45 PM with introductions by Swanson.

Schwer reported the State Fund Task Force activities beginning with the 2006 State Fund Conference. Members of the State Cleanup Funds Task Force along with the Oklahoma Corporation Commission, EPA-OUST and NEIWPCCC conducted the 2006 State Fund Administrators Conference June 10 - 14, 2006 in Oklahoma City. The Conference theme was "Driving State Funds Forward," and it featured three technical and policy oriented tracks. The State Fund Administrators are responsible for 47 active State funds, including nine State programs that have transitioned to insurance and other financial assurance mechanisms.

The 2007 State Fund Administrators Meeting is being planned for June 3-6, 2007 in St. Petersburg, FL. A call for ideas, abstracts and presenters was distributed to the Fund Administrators and posted on the NEIWPCCC web site. The 2007 Fund Administrators planning team will meet to develop the initial draft agenda and meeting logistics on January 11-13, 2007. While EPA-OUST has committed to funding this meeting through 2007, OUST management has indicated that for 2008 there may need to be some

changes. The Planning Team and EPA will work together over the next year to discuss these changes. Under consideration is changing the time of the meeting to possibly August or September, looking at having more staff training sessions and workshops, and continuing to have a meeting of state fund administrators to discuss key issues.

Schwer reported on his involvement with the State Fund Diversion and State Fund Soundness guidance workgroups. To date neither workgroup has released draft grant guidance. The draft State Fund Soundness guidance may be sent for public comment in the near future.

A member asked whether a State Fund diversion for compliance would be allowed under the guidance. The answer given was generally a diversion for a compliance effort or other Subtitle I activity would be allowed. It was generally discussed that the State Fund diversion language in the Energy Act was included to address fund balance diversion such as what occurred in Kentucky where the State legislature transferred large amounts from the State Fund to the general fund to be used for non-environmental programs. Attempts to address other “what if” scenarios in the guidance language have been difficult.

Other guidances were discussed including the three draft grant guidelines, which were previously available for public comment (the comment period has since closed): Public Record, Secondary Containment and Financial Responsibility And Certification. It was reported that generally the State and EPA members are attempting to maintain flexibility for State implementation.

Members suggested that if State Fund soundness is evaluated based on the ability to fund releases that it should be based on the ability to fund new releases, as each State will prioritize funding differently. It was generally agreed that the language in the Energy Act is interpreted to address new releases and the portion of the federal LUST Trust Fund is a very small percentage of the total amount spent by the State Cleanup Funds.

Members briefly discussed how EPA would interpret the funding language in the UST Subtitle where any State that received funding under the new subtitle would be required to accomplish ALL of the new and existing mandates in order to receive ANY federal funding for the UST/LUST programs. This has been called the “all or nothing” scenario.

EPA-OUST officials recently stated that, after analysis, the EPA-OGC has determined that the funding requirement in the Energy Act language may be implemented by utilizing the grant agreements between the individual States and each of the 10 EPA Regions. A grant violation for any mandate not accomplished by a State could be addressed by a grant penalty, with the potential for some discretion contained in the grant agreement between each EPA Region and the State. An August 10 memo (distributed to all States on August 14) from Cliff Rothenstein, EPA-OUST Director, summarized the EPA Office of General Council's opinion on non-compliance with the UST/LUST mandates in the Energy Act and the impact to State grant funding.

A State member present added that for a State without its own tank fund from which to finance its regulatory program has no option other than to comply with the new mandates in order to receive the federal funding.

A State official asked if a State was considering excluding LUST money and opting out of the federal program did EPA look at this as a problem or an opportunity. The petroleum marketers in any State may decide for an increase in fees to fund a State program absent federal funding.

Spiese provided the group a summary of the LUST Task Force meeting the previous day, Monday, October 23. This included a report on implementation of workgroup activities on Cost Recovery, Public Record and LUST Allocation, each being reported as not having any recent significant progress, except several conference calls.

The ASTSWMO LUST TF efforts to research lead scavenging compounds such as Ethylene dibromide (EDB) was reported next. Several States have agreed to research and testing at low concentrations. States have sent samples to the US EPA's Robert S. Kerr Environmental Research Center in Ada, Oklahoma but, to date, those States participating have not yet received any data. It was reported that the use of LUST Trust Funds on any site would trigger sampling for EDB. The State of Kansas will take the lead on testing for EDB and the Ada, Oklahoma lab is currently offering analysis with Hal White, EPA-OUST, coordinating. It was noted that both EDB and Trichloroethylene (TCE) tend to stratify at the bottom of an aquifer.

In anticipation of future funding for a remediation related training workshop, the ASTSWMO LUST Task Force will question States for a relevant theme.

Progress on the 2007 National Tanks Conference was reported. The planning team, consisting of ASTSWMO Tanks Subcommittee members, State UST, LUST and Funds officials, EPA-OUST management and Regional program managers met to develop the first draft agenda and logistics on October 5-6, 2006 in San Antonio, Texas. The 2007 Conference is scheduled for March 5-7, 2007 in San Antonio. The Conference planning and logistics is being managed by NEIWPC.

As preparation for the State-EPA roundtable planned for the following morning, the Brownfields 25 percent set aside for petroleum LUST sites, Institutional controls and LUST closure goals were discussed.

Brauksieck discussed the planned State - EPA Energy Act Implementation Meeting. The Tanks Subcommittee, Energy Policy Act Workgroup and EPA-OUST have organized this meeting which is scheduled to take place November 29 - 30, 2006 at the EPA-OUST Headquarters building in Arlington, VA. The will bring together State officials and EPA to discuss the status of implementation of the new UST-LUST mandates contained in the

Energy Policy Act of 2005, in addition to the recently published draft and final grant guidelines. (November 29-30 meeting agenda attached below)

Brauksieck used the meeting to review the agenda to seek any comments or revisions (highlighted in bold) from the State officials present.

The meeting adjourned at 5:15 PM.

Wednesday, October 25, 2006

STATE/EPA ROUNDTABLE DISCUSSIONS - AGENDA

8:30 - noon **Tanks Roundtable** Co-moderated by Dick Swanson (GA), Chair, Tanks Subcommittee, and Cliff Rothenstein, Director, EPA Office of Underground Storage Tanks.

Meeting Notes

The meeting began at 8:30 AM with introductions by Swanson.

Schwer continued by describing the activity of the State Fund Diversion and State Fund Soundness guidance workgroups. To date neither workgroup has released a draft grant guidance, however a draft State Fund Soundness guidance may be sent for public comment in the near future.

Schwer asked Cliff Rothenstein, EPA-OUST director when the draft guidances from either the State Fund Diversion and State Fund Soundness guidance workgroups would be made available.

Rothenstein answered with the explanation that the timing of publishing all draft guidances is a function of the statutory deadlines contained in the Energy Act. Neither the State Fund Soundness nor Fund Diversion guidelines have a deadline. The current tax authority issue, which has made the new regulatory mandates in the Act non-allowable uses of LUST Trust Fund dollars, has eliminated the issue of any penalty for Fund Diversion for FY 2006 and 2007. In addition, there will be no retroactive penalties. Rothenstein continued that State Fund Soundness is still an important issue to EPA-OUST.

A discussion continued on the criteria for Fund Soundness which requires a State to pay an approved claim within 90 days. The fund soundness data compiled by Bill Foskett, EPA-OUST is being used as a basis for comparison.

It was reported that a review of private insurance as an FR mechanism is not moving forward due to the focus on implementing the Energy Policy Act.

Members discussed the decision by the State of Florida to decline federal UST and LUST funding while continuing to operate their compliance and cleanup program and whether Florida has or will develop a delivery prohibition program.

Spiese next reported on LUST related implementation workgroup activities. The LUST Allocation workgroup activities, which will affect how any additional funds for MTBE related remediation will be distributed, is tabled for now. Rothenstein added the current LUST Trust Fund appropriations has not been divided according to the funding authorizations sections in the Energy Act, which specified four different pots of funding. The LUST Allocation workgroup asked to be informed of any changes in the appropriations categories.

The Cost Recovery workgroup activities have also slowed based on the statutory deadlines contained in the Act and may become an addendum to an existing guideline.

The activities of the Public Record workgroup were discussed next with members focusing a requirement for site-specific data. The current interpretation of the language in the Act would require summary data. Members described the danger in highlighting a release at a specific site or company. The report media was debated with some States providing access to a hard copy of the file versus electronic media and Web access. The language in the Act only requires States to update the Public Record annually and to be made available to the public in a manner and form as the Administrator shall prescribe after consultation with the States. EPA-OUST will try to maintain flexibility while following the Act, but indicated the requirement to post summary data on the Internet will likely remain in the final Guidelines.

Spiese continued with other LUST issues including announcing the development of a session at the 2007 National Tanks Conference on Ethylene dibromide (EDB) data.

Spiese reported on LUST Closure Goals for State programs and requested an update on these goals from EPA. Rothenstein responded by describing how all Federal government agencies generally, and EPA specifically, are focusing more on numerical goals and measures which are managed by the Office Management and Budget, OMB. In addition, all future budget requests are tied to these measures. Recently, EPA-OUST has convinced OMB to continue to reduce the LUST cleanup goal to 13,000 LUST cleanups nationwide.

Rothenstein discussed the issue of declining LUST cleanup goals while LUST funding for cleanups remain constant and how that may not be sustainable, given the current pressures on all non-defense federal spending. If the sites remaining are defined as the most difficult sites, the goal for EPA and States would be to work together to quantify this in order to prepare for the FY 2008 budget cycle.

A State official from Kansas added that it may be more cost efficient to continue long term groundwater monitoring at lower risk sites and that his State has defined a plan for active remediation based on State specific cleanup priorities and risk. The Kansas official reported that generally, the cost for more aggressive active remediation may be ten times the amount for a long term groundwater monitoring plan.

Rothenstien responded that OMB has been combining State and Federal cleanup dollars to determine what is required to increase cleanups. In addition, prioritizing site cleanups is a function of operating a financially sound program.

The discussion focused on the increased use of ethanol and biodeisel fuels and the impact on regulating those facilities. State officials present debated the deminimus levels for regulated substances in the USTs using the various concentrations of ethanol being distributed nationwide from E10 to E 85. It was generally agreed that states would still regulate the facility if the concentration of a regulated substance such as gasoline was 15 percent, as in the case of E85 fuel.

The roundtable continued with the focus on the planned State - EPA Energy Act Implementation Meeting scheduled to take place November 29 - 30, 2006 at the EPA-OUST Headquarters building in Arlington, VA (agenda attached below).

Members asked how EPA-OUST would address a non-compliant State, in terms of implementing the new mandates contained in the Energy Act. The answer given was that the statutory deadlines contained in the Energy Act language cannot be changed, however EPA-OUST has the flexibility to make a determination of when a State is making an effort and when a State has demonstrated material non-compliance.

For reference, from the Final Delivery Prohibition Grant Guideline:

How Will States Demonstrate Compliance With These Guidelines?

After August 8, 2007, the effective date of the delivery prohibition requirements, and before receiving future grant funding, states must provide one of the following to the appropriate EPA Regional office:

- For a state that has met the requirements for delivery prohibition, the state must submit a certification indicating that the state meets the requirements in the guidelines.
- For a state that has not yet met the requirements for delivery prohibition, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:
 - A description of the state's activities to date to meet the requirements in the guidelines;
 - A description of the state's planned activities to meet the requirements; and
 - The date by which the state expects to meet the requirements.

In addition, in the early years, it was suggested that it would be best not to try and define specific funding criteria based on compliance with the final grant guidelines. However, any grant received after the statutory deadlines must be able to describe efforts to comply with the mandates. It was noted that States are on different federal grant schedules.

Brownfields was discussed next following the introduction of David R. Lloyd from the Office

of Brownfields Cleanup and Redevelopment. Lloyd discussed the potential for Brownfields reauthorization. As background, the Small Business Liability Relief and Brownfields Revitalization Act was signed into law in January 2002 and is due for reauthorization in January 2007. One recommendation currently being pressed by municipalities is the elimination of the statutory requirement for a 25% set aside of the Brownfields, Section 104 grant funding for petroleum remediation sites. The attendees debated whether the petroleum set aside should remain or if the eligibility requirements should be changed. It was generally agreed that the requirements for demonstration of the petroleum set aside eligibility is a difficult administrative task. Tanks and Brownfields members are currently working together to resolve this issue.

The roundtable adjourned at noon.

Attendees

States

Roy Harbert, IN
Ron Hammerschmidt, KS
Lee Davis, AL
Brad Johnson, UT
David Brixen, DE
Jennifer Roushley, DE
Jim Glass, OR
Stephen Reuter, NM
Dawn Henry, VI
Jerry Banks, MS
Steven Chang, HI
Randy Rothe, MI
George Lombardo, NH
Scott Whittier, ME
Gary Blackburn, KS
Randy Carlson, KS
Mike Felix, NE
George Matthis, NC
Wilbert Jordan, LA
Carol Eighmey, MO
Robert Stout, MO
Ken Koon, MO
Paul Nelson, IA
Andy Shivas, IN
Chuck Schwer, VT

Richard Spiese, VT
Stan Clark, SC
Richard Swanson, GA
Russ Brauksieck, NY

Other

Cliff Rothenstein, EPA-OUST
Carolyn Hoskinson, EPA-OUST
Mark Barolo, EPA-OUST
Kara Sergeant, NEIWPC
Steve Crimando, ASTSWMO
Stanley Walker, EPA R7