

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

October 9, 2017

3:00 p.m.

**Oklahoma Corporation Commission
Jim Thorpe 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 3:00 p.m. on September 22, 2017, 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, Joe Foster, Michael Key, Kathy Lippert, Tommy Shreffler, Joe Stephenson, and Commissioner Ray Vaughn**. Members absent were **Keith Davis, David Guthrie, and Mike Sawyer**.

Joe Stephenson, Chairman of the Storage Tank Advisory Council (STAC), stated that a quorum was present and called the meeting to order at 3:05 p.m.

The **first order of business** was the approval of the minutes from the last meeting. **Kathy Lippert** made a motion to approve the minutes from the last meeting and **Commissioner Ray Vaughn** 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 September, 2017, assessment was \$2,067,193.77; total revenue was \$2,099,506.18; there were 107 claims totaling \$1,453,140.52; total expenses were \$1,844,576.21; the Indemnity Fund balance was \$19,496,685.77 less encumbered funds in the amount of \$19,404,932.22 leaving an available balance of \$91,753.55.

Joe Stephenson asked how revenue was trending over the past year and Ms. Brannon said it was trending up. **Kathy Lippert** requested clarification on encumbered funds. Robyn Strickland said they are obligated funds which include personnel, money set aside for large future cases, and all purchase orders. **Ms. Lippert** commented staff did a good

job balancing funding so the legislature sees there is not much available money. Ms. Strickland said timely claim submittal is critical so the balance continues to decrease.

Robyn Strickland introduced Brock Stuber, a new Compliance Analyst, and said Brian McDonald (not present) had been hired as a Compliance Analyst, and Patrick Stewart (not present) had been hired in the Technical Department.

The **third order of business** was proposed rules by Jeff Southwick. Mr. Southwick said staff is proposing changes in five PSTD Chapters and also Chapter 5, the agency's Rules of Practice. Chapter 5 is to allow administrative approval for a variance without the necessity of a hearing for all PSTD rules, a variance review fee, and increasing licensing fees from \$50 to \$100 with annual renewal are being considered.

Mr. Southwick opened the floor for comments or questions regarding proposed changes in Chapter 15 Fuel Inspection.

165:15-1-2. **Michael Key** asked if "the transport truck connected to the storage tank system" in the definition of underground storage tank system means the truck falls under OCC regulations when it is connected to the tank. Generally when there is a surface spill from a transport truck, it is called into ODEQ and their regulations are followed. **Mr. Key** asked if a courtesy call now needs to be made to the OCC. Mr. Southwick said the change clarifies the definition currently in statute [17 O.S. §303] and spills and overfills in excess of 25 gallons have always been reported to the OCC. Ms. Strickland said the definition is already in Chapter 25 and is only being changed in Chapter 15 to match it.

Joe Foster said he was not aware that if a release occurs from a transport truck connected to the UST it would be a reimbursable event. **Mr. Key** said he also was not aware it was reimbursable. Ms. Strickland said if the truck was connected to the UST it has always been reimbursable.

165:15-1-2. **Deanna Atkinson** asked if heating oil was now a regulated substance since it is replacing "burning oil" in the definition of measuring devices. Mr. Southwick said if it is not for use on the premises it is.

Mr. Foster asked if heating oil is a petroleum product that would be eligible for Indemnity Fund reimbursement. Mr. Southwick said it was not a change but a clarification for the term burning oil which is already in the definition. **Mr. Foster** asked if heating oil had ever been in or refused in the Fund and Ms. Strickland said it had not. Mr. Southwick said he was not sure if there are any in Oklahoma. **Mr. Foster** said he knows there are and has told people they are not eligible and not required to be registered.

Justin Lankford said 165:25-1-24(2) states that tanks storing heating oil for consumptive use on the premises where stored are excluded from the rules. **Mr. Foster** thought they were excluded and asked if we are creating eligibility for tanks previously not eligible and if so it should be discussed. Mr. Southwick said based on the rule that exempts them they would not be eligible for reimbursement. EPA's regulations did not address burning oil and his intent was for our UST rules to pass their examination and felt they would be more receptive to referencing heating oil versus burning oil. **Mr. Foster** said some states have programs specifically for heating oil tanks. Mr. Southwick felt if there is no other reference to burning oil in the Chapter there should at least be a reference to heating oil. **Mr. Foster** said he is sensitive to changing the reference to heating oil tanks because it might give the impression of creating eligibility for them.

165:15-3-2. **Ms. Atkinson** said "pump" is being changed to "dispenser" in this rule but not in 165:15-19-1(3). Staff will make the change.

165:15-3-21(2)(D)((vii). **Ms. Atkinson** asked if striking the monthly reconciliation report (MIR) meant that owners no longer had to keep copies of it with their SIR. Mr. Lankford said EPA allows you to back up 15 days and borrow data from the previous cycle to send to the SIR provider and it is almost impossible to keep a running 30-inventory that matches so the requirement is being stricken from the rules. All other forms of leak detection that require inventory will still require 30-day inventory.

165:15-3-21(2)(E). **Ms. Atkinson** asked how the test should be done if monthly inventory reconciliation is not required. Mr. Lankford said a 0.1 test is required at least once every 30 days with ATG. If the operator wants to do it every two weeks they can but it must be at least once every 30 days. Mr. Lankford said CSLD or 0.2 require 30-day inventory with it.

Ms. Atkinson said the 30-day requirement has been very difficult. Ms. Strickland said it has been for staff also and they have had numerous conversations with Region 6 about it. **Ms. Atkinson** asked for clarification of what EPA means by "within a 30-day period" versus "every 30-day period." Mr. Lankford said EPA told them inventory is required every 30 days not within 30 days.

Mr. Key asked if that was a rolling average. Mr. Lankford said if you start on January 1 you must reconcile on January 30 and the next 30 day cycle would start January 31. Previously you could reconcile on the last day of the month but now it is every 30 days no matter how many days there are in the month so it will roll.

165:15-19-3(a). **Ms. Atkinson** asked if there was ever a requirement that would not already be a violation of a statute or rule or order. Mr. Southwick said when an inspector goes to a facility and tells the owner their hoses are chapped and need to be replaced it becomes a requirement. The language is in 17 O.S. §1 which says a person or

firm may be fined by the OCC for a violation of any rule, statute, order, or other requirement. **Ms. Atkinson** felt the requirement was vague and overreaching.

165:15-19-3(d). **Ms. Atkinson** asked if notification and/or correspondence will be mailed or electronically delivered meant it must be done by email. **Ms. Strickland** said that is for the upcoming portal and did not necessarily mean email.

165:15-19-4(b)(2). **Ms. Atkinson** said she liked the language being stricken that said violations must constitute an immediate hazard to be shutdown rather than just correction of a problem. **Ms. Lippert** said we have always been here to protect the safety of the environment and did not have a problem striking the language. **Ms. Atkinson** said the rule is about shutting a tank owner down and felt violation of a rule was better than correcting a problem which is vague and subjective.

165:15-19-5(a). **Ms. Atkinson** said the table in Chapter 15 is referred to as the Field Citation Table instead of Fine Citations Table.

Ms. Lippert asked when public notice of a rulemaking was anticipated. **Ms. Strickland** said they would like to have another STAC meeting in November and ask for a recommendation to proceed with a rulemaking. A notice for proposed rulemaking will be filed and two technical conferences will probably be held.

Jeff Southwick asked for comments or questions on proposed changes in Chapter 25:

165:25-1-11. **Mr. Key** said the meaning of recalcitrant is someone who is very stubborn, obstinate and uncooperative towards authority and discipline and asked if the definition could say someone responsible for a tank system who repeatedly will not adhere to a PSTD enabling statute or rule. **Mr. Southwick** said this frequently happens in cost recoveries where LUST Trust funds have been spent and there is someone who will not cooperate and refuses to work with staff. This was the best he could come up with as a definition because the ALJ struggles with making a judicial determination for a recalcitrant owner but there is no definition for what that means. It was never intended for any kind of enforcement purposes and is only intended for LUST Trust Fund cost recovery purposes so that is why it was put in the definitions. **Mr. Key** felt further clarification was needed because if you receive an NOV you would be a recalcitrant owner because you were not following a commission rule. **Mr. Foster** agreed and suggested saying a person who, after OCC action and formal notice, does not follow the rule. Staff will review.

165:25-1-11. **Rob Williams, Stantech**, said the last sentence in the definition of owner states an owner of a tank system taken out of service before November 8, 1984 is not considered to be a storage tank owner for any PSTD regulated purpose. **Mr. Williams** asked if an owner has tanks on their property that have been out of service since before that date and they choose to come into compliance would this change their ability to be

regulated. Mr. Southwick said if you did not own or operate those tanks before they were taken out of use prior to November 8, 1984, you would not be considered an owner but you would still have access to the Indemnity Fund as an impacted party.

165:25-1-48. Ms. Atkinson said the insertion says applicable certification and later says manufacturer's certification. She is not aware of any certification other than manufacturer's certification for tank and line testing. Staff will strike.

165:25-1-53. Bud Ground, Environmental Federation of Oklahoma, said it was his understanding that 30-day inventory means 30 days from one period to the next period. EPA regulations say at least once every 30 days which is within 30 days. Every 30 days, within 30 days, and at least once every 30 days can all be interpreted differently making it difficult for an owner with one or two tanks to be in compliance. It would help if staff could write out exactly what is needed to be done to clarify.

Mr. Lankford said in the past monthly inventory reconciliation was required with SIR but once they started enforcing EPA's "at least every 30 days" rule they found that inventory with SIR was next to impossible to reconcile and that is why it is being stricken for SIR. With a 0.2 test with inventory you are not trying to match that to SIR. You may have a 0.2 test within the 30-day period your inventory was reconciled so staff did not see a need to take it out of the rules for the 0.2 test. When he sees one on October 15 he will be looking for the next one on November 14 or sooner. It will change every 30 days and will not be the same. Month or monthly means nothing anymore and he doesn't know how else to look at it because EPA told them 30 days is 30 days.

Terri Roberts, Oklahoma Environmental Services, said EPA says within a 30-day monitoring period. The training class said if it was in by the 25th and we get it back by the 30th we are good. If that is done every month it is within the 30-day monitoring period. If the report is dated April 26, next month she must have it by May 26 or she is out of compliance and that is what everyone is having problems understanding. Mr. Lankford agreed and said they sent several examples to EPA to review and were told we accept this one but we don't accept that one so that is what they have to enforce. One example they sent was where five days were borrowed and they were told it will not always work that way. If you take 25 days worth of data with five days borrowed and your SIR provider gets it right back to you then you are in compliance. But the next 30-day period if they get it back to you two days later then you are out of compliance. Mr. Lankford agreed it is hard for everyone.

Ms. Roberts asked if that was staff's interpretation of EPA's rule and Mr. Lankford said that was the example they sent to EPA. Ms. Roberts said she thinks any time between the 25th and 30th you are ok because you are within the 30 day monitoring period and that is where clarification is needed. They ran April 28 because it was the last Friday of the month and they have to do it on a business day. The next month the 28th was over a weekend so it had to be bumped up to the 26th and each month after that the date

gets earlier so the 30-day cycle gets earlier. Cycle 10, for the month of October, is September 13th through October 11th and they will end up with an extra cycle a year just to run it every four weeks and have it back to the client within 30 days. Ms. Roberts said people just don't understand it and **Mr. Key** said that is not the way the business works. Mr. Lankford said EPA recommended sending it to your SIR provider every 15 days with the easiest way being to send in 15 days and borrow 15 days. After the initial one you will be analyzing that 15 days twice every time. Mr. Lankford asked if they think the word "within" would fix the problem. **Ms. Atkinson** said she thinks it would because as long as it is within 30 days the owner would be compliant.

Mr. Southwick said the rules were changed to match EPA's and they even give us the specific phrases that had to be in our rules for state program approval. We agree they don't make sense and we don't like them either. **Ms. Atkinson** said some rules have within 30 days while some have every 30 days and since the rule is open we could change them to say the same thing. Mr. Lankford said it depends on which form of leak detection you are talking about because a 0.2 test plus monthly inventory can be within 30 days instead of every 30 days.

Candace McGinnis, OPMCA, said everyone agrees there is an issue and asked if there was anything they could do to help clarify whether EPA means within 30 days or every 30 days. Ms. Strickland suggested people can send comments that staff can forward to EPA Region 6. Staff does not dispute that it is an issue for both tank owners and staff. They have had multiple conversations with EPA and have correspondence saying what they will and will not accept so staff is doing exactly how they told us it must be done. **Ms. Lippert** asked if we could ask for comments from the public that STAC can forward to EPA saying it is just not working and is difficult to understand.

Mr. Southwick suggested polling other states and if they are having problems they would have a united front. Ms. McGinnis said she polled other states and no one else is doing it this way nor are the SIR providers requiring it this way. Ms. Strickland said they brought that up to EPA and were told that it may happen in other regions but it will not happen in this region. Ms. McGinnis asked if it would help to get PMAA involved on the national level. Ms. Strickland asked Ms. McGinnis to send any backup documentation she had and she will send it to Region 6 as a starting place.

165:25-1-64. **Mr. Key** asked if the change meant fees will be charged on each compartment of a split tank and Ms. Strickland said that was correct. Ms. McGinnis asked if the fee was still going to be \$25 and Ms. Strickland said it will.

165:25-2-36(b)(D) **Mr. Key** said the appropriate term is hydrostatic testing instead of water testing. Staff will make the correction.

165:25-2-39. A member of the audience commented that not all employees and agents would be knowledgeable of the tank system and should not be liable for something they

have nothing to do with. Stores usually have managers and other personnel who are trained and it does not seem fair a cashier who is not trained or expected to know about monitoring equipment, etc. should be held liable. Mr. Southwick said staff has been adding this throughout the rules so there is a distinction when someone knowingly or intentionally does something which would make them culpable.

Mr. Key said he initially had similar thoughts about an employee behind the counter being responsible or culpable for something. Generally if that person did something wrong their disciplinary actions would be handled through the owner/operator in a private manner. However, with level C training they are now supposed to know what to do so they really could be culpable.

165:25-1-101. **Joe Foster** asked for the rationale on changing licensing from every two years to annual renewal. Mr. Southwick said the majority of professional licenses are renewed annually, however, written comments have been received on the challenge of finding continuing education classes so staff is reviewing. To pull a license he must prove his case by clear and convincing evidence, which is almost a criminal standard, and to him suggested when the legislature drafted the language on licensing they felt it was important for the standards to be high for taking away someone's livelihood. **Mr. Foster** said STAC has a good history about licensing and wanting it to mean something which is one reason continuing education is required. However, people need a program that is relevant and actually continually educates but taking the same class every year doesn't make sense. If we are going to annual renewal there need to be classes available every year because they have trouble finding relevant classes every two years. Ms. Strickland said a continuing ed class was added today and they are looking at adding eight more. **Mr. Foster** thinks there will be pressure because of the additional cost and asked if a lack of continuing education is hampering the quality of the work staff is receiving.

Mr. Lankford said he worked a station that morning and is concerned about issues he is seeing at new facilities. For example, the interstitial portion of piping must be opened up under every sump and dispenser, and vent lines are supposed to be 5 feet above, but there are licensees not doing the things that should be done. **Mr. Key** asked if the intent is for reciprocity where they get a license here because they had one in another state. Ms. Strickland said that was not the intent.

Mike Fitter, Seneca, said this is one of the most stringent programs on finding CE classes compared to a Professional Geologists license. In many industries you can get credit for going to any conference but here you can only get credit for specific conferences. **Mr. Foster** said his company is not teaching a class this year which removes 50% of the available remover classes in Oklahoma and is concerned with finding high quality classes. He believes the OCC-approved classes are some of the best because they are directly related to the work performed. In a two year period he might have an

opportunity to do something relevant to count towards continuing education but it will be difficult to do in 12 months.

Ms. Lippert said the removers class is getting pretty stale and we also need good installers to teach classes. Cara Parent said ITRC has some free archived classes that can be taken and to let her know of any online PG courses which she will send to the review team to look at.

Ms. Atkinson said if this is intended as a revenue generator she would not want the additional revenue generated to be offset with administrative costs associated with collecting the information, issuing the license, and entering it into the database just to make sure the class is preapproved. **Mr. Foster** commented licenses were created to generate revenue to offset administrative costs.

165:25-1-107(a)(9). **Mr. Foster** asked if we really want to put in rule that failure to submit paperwork shall result in enforcement action because it looked like if his claim was not turned in on time an enforcement action would be filed. **Mr. Southwick** said the problem has been with environmental reports that have consistently been months overdue and the rule was written to address that issue. By putting it in the rules staff has something that basically says we are tired of hearing your excuses so tell it to a judge. **Mr. Foster** said he doesn't want staff to be pursuing a lot of enforcement actions because that is nonproductive and urged consideration of "may" instead of "shall." **Mr. Key** agreed with **Mr. Foster**. Staff will review.

165:25-2-111(b). **Mr. Key** said requiring a licensed installer or remover on site for cutting and/or removing concrete for repairs is very hard for an owner/operator. If he has a small repair for an electrical issue like a bad wire in some conduit that is anywhere along the line run or anything to do with the tanks, all the way up to fill pipe, he would have to have a licensed technician, a licensed electrician, and a licensed remover on site. It will take quite a while for one small repair to be made because they all would have to be scheduled to be there at the same time, he may be shut down for a long time, and it will be very expensive. Diane Isam said a remover would have to be there to uncover it and then an installer has to be there for the installer's part. **Mr. Key** said he can understand the need for a licensed installer or remover for piping repair but for a minor electrical repair it will be expensive plus the logistical effort of getting all of them to the site at the same time. **Mr. Key** requested staff reconsider this change. Staff will review.

165:25-2-131(c). **Mr. Foster** said the proposed change requires holes be put in a tank when removed from the ground. You can file a variance for times when there are issues, however, many times there is a market for these tanks and the owner does not want it destroyed. **Ms. Lippert** said even if the tank had been inerted holes cannot be put in it at the site and then transported because you are supposed to plug the holes. She said it was not proper disposal and she does not like the change.

Mr. Foster said they removed several 30,000 gallon tanks at Will Rogers that were pristine and someone wanted them to be used as ballast tanks. **Mr. Key** said we know the rule says you can't put them back into the ground to use as fuel tanks but the final disposition has never been to require they be destroyed. **Mr. Foster** said they have tried to press that point a few times with mixed results. **Ms. Lippert** said people have used underground storage tanks aboveground which are not structurally made for that use and they rupture. We also don't want these petroleum product tanks to be used as culverts. When pulling them out of the ground the primary disposition should be disposal but they should go to a disposal yard where they have appropriate tools, are properly vented, and cut in a safe environment, not on the job site after being pulled out of the ground and set on the parking lot of a convenience store. **Mr. Foster** agreed. **Ms. Lippert** said she understands the intent is disposal but she is not comfortable with the language and asked staff to look at it again.

Travis Weedn said the language came NFPA and API. Darryl Cole read the rules from NFPA 30A and API 1604. NFPA did not say where this should be done but API said it should be done at an accepted facility using explosion proof tools to render it unfit for further use. **Mr. Foster** asked who should make sufficient holes in it because the way the rule is written it appears it is the remover's responsibility.

Rob Williams commented the remover does a lot of work to make sure there is not an explosive atmosphere and putting holes in the tank at the site is putting it back into an explosive atmosphere.

A commenter from the audience said other states require removers to document that the tank has been destroyed with pictures and include them with the closure documentation. Mr. Cole said staff is trying to get documented evidence the tank has been destroyed because there are people reusing them for water. **Ms. Atkinson** suggested having a standardized certificate of destruction. **Ms. Lippert** agreed. Mr. Southwick said staff has had instances where the tank was patched up and re-used even after a certificate of destruction was submitted with the closure report. **Mr. Foster** said requiring destruction might be the answer to some of these problems. Staff will review.

165:25-2-135. **Mr. Key** asked what the ultimate goal is for requiring bids before the decision can be made on closures in place. Mr. Southwick said if the request is based solely on financial concerns then staff wants to see that it really is cheaper to close in place rather than removal. If a tank owner wants to pay more to close a tank in place instead of removing it he has to convince staff why it should be allowed. But if it is based on it being cheaper to close in place versus removing then staff wants to see the bids. **Mr. Foster** thought we should avoid telling people how they must present their case especially on this issue. Typically the variance is requested because the tank is located under a building and not because it is cheaper. Mr. Southwick said staff has no problem with those but this is specifically for people requesting a variance based on cost. **Mr. Foster** suggested saying the agency has a strong bias towards removal and

clear and convincing evidence must be presented for why a tank should be allowed to be left in place.

165:25-3-7.1(2)(b). **Ms. Atkinson** asked if staff checked with national SIR providers on being equipped to report failures to PSTD within 24 hours of discovery. **Ms. Lippert** thinks it is onerous and should not be the responsibility of the provider but rather the owner/operator. If the provider notifies the owner it is the owners responsibility to report. **Ms. Atkinson** said between the 30-day requirement and then a reporting responsibility they would have to segregate Oklahoma clients and on a daily basis report those that failed. She did not think they will be willing to do that. Staff will review.

Commissioner Ray Vaughn said he assumed governmental entities that own and operate tanks have the same requirements and wanted clarification because he has both USTs and ASTs on his yard. While they have the capability of doing a lot of these things they may not want to because of the potential hazard involved in handling hazardous materials in tanks. Mr. Southwick said USTs and ASTs owned by the county are regulated by these rules and both have access to the fund.

Mr. Foster requested "shall" be changed to "may" throughout the Chapter.

Mr. Southwick asked for comments or questions on proposed changes in Chapter 26:

165:26-2-1.3(d). **Ms. Atkinson** said an owner at a bulk facility had tanks with internal floating roofs and asked if the proposed change meant the fill line of the tank must be above the highest liquid level a tank can hold and if product lines meant the fill lines. Mr. Lankford asked if it was a vertical AST where the piping is at the bottom and **Ms. Atkinson** said it was and requested staff add additional language that addresses tanks with product lines at the bottom and floating roofs.

165:26-2-55(g). Diane Isam requested staff review the change regarding an AST Licensee must be on site for any concrete removal.

165:26-2-213(5). Ms. Isam said the change regarding destroying an AST at removal says a variance can be filed to reuse or move the AST and asked when the variance should be filed. Mr. Southwick said the variance request should be submitted before the closure took place and administrative review is a much faster process. If staff does not approve the request the applicant can then go before an ALJ in a hearing.

Mr. Lankford commented there were still some ASTs being used that were installed before July 1, 2007, when underground storage tanks were allowed to be used as an AST, and those tanks would not be allowed to be reused. Tanks that are UL approved and in good condition would most likely be approved to be used again.

Ms. Roberts asked why a variance is needed for UL approved ASTs and Mr. Lankford said to make sure it is not an underground tank being used as an AST, that it is a UL approved AST, and that it is in good condition. Ms. Roberts said she was referring to UL approved ASTs. Mr. Lankford said he understood that but there are USTs still being used as ASTs. Ms. Roberts said that has been illegal since 2007. Mr. Lankford said that is correct but they are still being used and if they were to be removed they could not be used again. Ms. Roberts said it is an extra step to require a variance for something that is illegal and not allowed in the rules. Mr. Southwick said they would only need to file a variance if they wanted to reuse it but if they wanted to sell it they would not need a variance. **Ms. Lippert** said we are trying to ensure the tank that is being reused is approved for reuse and suggested calling it a permit to reuse tank instead of a variance. Ms. Roberts said if you are going to reuse a tank, an AST Licensee would have to sign off for it to be permitted again, and it would have to be registered. Staff will review.

Mr. Southwick asked for any comments or questions on proposed changes in Chapter 27:

165:27-7-2(b). Rob Williams said they have a few cases that have bumped up to the \$500,000 maximum reimbursement and asked if staff would consider increasing it. Ms. Strickland said staff is looking at changing it but the rule can't be changed until the statute is changed. They would like to change to a \$2,000,000 maximum for everything (aggregate would increase also). Ms. Isam asked if current cases would be included and Ms. Strickland said if the case was active at the time they would be included.

165:27-7-7(m)(n). **Mr. Foster** said two exclusions were being added and not paying a non-owner for being inconvenienced by the mess made on his property is inconsistent with his experience. Ms. Isam asked if that meant an impacted property owner who has trees that died because of a release would not be reimbursed. Mr. Southwick said that is a different situation this issue is regarding access and use. **Mr. Foster** said in the past these issues have been handled case by case. If an owner had a little store but there is no room to install a big remediation system and it has to be installed on the neighbor's property the proposed change means we are no longer going to pay that neighbor to get on his land. Mr. Southwick said it could be done through an order. **Mr. Foster** asked how the consultant would be protected from being litigated into bankruptcy. Mr. Southwick said that is not the purpose of the fund. **Mr. Foster** felt it is totally unreasonable to think private property can be used without compensating that property owner. There is a difference between a tank owner and an innocent third party who lives next door and we want to use his land without compensating him. Mr. Weedn said it should fall back to the tank owner who caused the release not the Indemnity Fund.

Mr. Foster asked how a tank owner would pay in a straight assignment case where the consultant has taken on all the financial obligation. The tank owner has a contract with the consultant that says the consultant will bear the cost. Mr. Weedn said the tank owner should have to pay since he caused the release and we do not regulate the

consultant's contract. **Mr. Foster** said he did not think the Fund could use third party private land without expecting to pay for it and it doesn't make sense that we would not pay for it. People will hire attorneys and you end up with a lot of cleanups that shut down for years because you don't want to pay \$50 to them.

Mr. Foster said he thought we determined a long time ago that third party damage claims were not reimbursable based on the statute. **Mr. Southwick** said the court of appeals said differently (Guthrie case). **Mr. Foster** said he would throw it back to the tank owners that if you lose a million dollar lawsuit because your release, which is an eligible release for which OCC has paid every penny, but you lose on a third party damage claim should your insurance company should stand behind you or not. **Mr. Southwick** said the Indemnity Fund is not an insurance company and it's purpose is not to Indemnify anyone. It pays for the investigation and if necessary remediation of releases from petroleum storage tanks that are regulated. If you want insurance to pay or compensate your next door neighbor who has gasoline on his property and sues you for it that is your choice but when you take money from the Indemnity Fund for that you take money away from corrective actions.

Ms. Atkinson asked if it is the same thing if the third party damage was to eliminate a receptor. **Mr. Key** said if it went into a basement and soaked the carpet with gasoline and now there is a health and safety and explosive issue. **Ms. Lippert** said or we are paying to plug their water well which right now is \$1,000. **Mr. Southwick** said there are ways to get around it. **Mr. Foster** said he is opposed to this change and did not think it should be in a rule. If staff wants to refuse to pre-approve reimbursement for it maybe but to put it in a rule denies the reality of how these cleanups are performed.

Mr. Foster said he does not look at (m) and (n) as being equivalent and they touch on different concepts and different uses of the money.

Chapter 29:

165:29-1-11. **Ms. Atkinson** asked why abandoned systems is being deleted from definitions. **Mr. Southwick** said the definition is in 17 O.S. §301 and he believes this definition is almost word for word what it says in the statute anyway.

Ms. Isam said she noticed in some places the rules say a release should be reported and in some places it says it should phoned in. Staff will review.

Joe Stephenson asked if any attendees had any questions or comments before the meeting was ended. There were no questions or comments from attendees. **Mr. Southwick** said written comments were welcome and will be discussed at the next meeting and staff will send STAC members a copy of any comments from OPMCA forwarded to EPA.

Michael Key said he would like to be dismissed as the co-chair of the Storage Tank Advisory Council due to his travel schedule. **Mr. Stephenson** said the issue can be discussed further at the next meeting.

It was agreed the next meeting would be held Monday, November 13, 2017 at 2:00 p.m. **Kathy Lippert** made a motion to adjourn and **Michael Key** seconded it. All members present approved the motion and the meeting adjourned at 4:55 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
Room 105
2101 N. Lincoln Blvd
Oklahoma City, Oklahoma 73102

POSTING DATE: Wednesday, September 22, 2017

MEETING TYPE: Special

MEETING DATE: Monday, October 9, 2017

MEETING TIME: 3:00 p.m.

DIVISION: Petroleum Storage Tank Division

AGENDA:

1. Approval of the minutes from the October 3, 2016 meeting
2. Financial Report – Denetta Brannon
3. Rule Changes– Jeff Southwick
 - Chapter 15
 - Chapter 25
 - Chapter 26
 - Chapter 27
 - Chapter 29

POSSIBLE ACTIONS:
Discussion/Vote