

**STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
STORAGE TANK COMMITTEE
HAROLD RUNNELS BUILDING**

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APPROVED 4-18-2007

Minutes of the January 10, 2007 Meeting

The meeting of the Storage Tank Committee (STC) was held at the NM State Personnel Building, Leo Griego Auditorium, Between Camino Carlos Rey & Luana St. next to the Mazda Dealership, Santa Fe, New Mexico 87505 on January 10, 2007. Chair Jim Norton called the meeting to order at 10:03 A.M.

Members Present:

Jim Norton, Chair
Ryan Briggs, STC Member
Wilfred Rael, STC Member
Ronnie Pynes, STC Member
Joseph Chavarria, STC Member

Members Absent:

Paul Aguilar, STC Member
Ruben Baca, STC Member

Other Representatives Present:

Donna Gary, EPD
Jim Davis, NMED/PSTB
Kalvin Martin, NMED/PSTB
Joyce Shearer, NMED/PSTB
Cathy Atencio, NMED/PSTB
John Kovacs, NMED/PSTB

Joe A. Galemore, Kleinfelder
John Casey, Basin Engineering
Kyle Kerr, Envirotech, Inc.
Brad Billings, BAI
D. Wagner, Western Technologies
Morris Young, Envirotech, Inc.

Lorena Goerger, NMED/PSTB
Jennifer Pruet, NMED/PSTB
Joyce Croker, NMED/PSTB
Phyllis Martinez, NMED/PSTB

Andy Freeman, Hall Environmental
Reid Allan, Souder Miller & Assoc.
Scott McKittrick, Souder Miller & Assoc.
Justin Ball, Kleinfelder

Item #1 Roll Call

The PSTC Administrator took the roll and noted a quorum was present.

Item #2 Approval of the Agenda

Mr. Jim Davis requested to add an item to the agenda to be identified as Item #6 'Update on Regulation process'. We will use this as one of the ways to present information in a public forum.

**Action: Mr. Jim Davis requests to add 'Update on Regulation Process' to the agenda
Mr. Briggs moved to approve the Agenda as presented.
Mr. Pynes seconded. Motion passed unanimously.**

Item #3 Update on Corrective Action Fund

The Chair, "As you recall at our last meeting there was difficulty with the transactions to the new State Accounting System, so we were not able to have the numbers for you. There are still a few glitches but Donna Gary and her staff have been working hard to give us an up to date accurate data."

Donna Gary, Manager of the Office of Finance and Budget, "I had given you the component parts from July to September verbally at the last meeting. Today there are handouts from October to December. One of the issues at the last meeting was to reconcile payments that were recorded to our database and the SHARE database. Joyce Croker has been able to get information on the warrants to enter into our database to compare with the Share database. Normally we like it to be the opposite. As a result, in October we discovered that although warrants were issued on October 17, they did not show upon the SHARE trial balance. We know that on the SHARE detail reports that warrants were issued on October 17 but are not posted to DFA Trial Balance report (which is like a bank statement. So you are going to see a footnote on October. You see the orange exclamation point next to payment that is where the foot note is and reads 'DFA trail balance etc...'", we decided we really need to know where our cash balance is regardless of how DFA is showing it on the DFA Trial Balance Report.

October:

Payments - \$2,946,733 Receipts - \$1,072,124 State Lead - \$126,851 Responsible Party - \$945,243
Operating transfer - \$510,608 Reserve \$1,000.00
Work plan liabilities - \$11,120,842 Un-obligated - \$3,132,306

November:*

Payments - \$2,375,577 Receipts - \$1,414,415 State Lead - \$143,475 Responsible Party - \$1,270,940
Operating transfer - \$510,608 Reserve \$1,000.00
Work plan liabilities - \$11,120,842 Un-obligated - \$3,132,306

*Taxation and Revenue show \$2,375,576.96 for November CAF payments, that did not get posted in SHARE. So the October receipts were posted in November and November in December. We are in discussions with TRD and SHARE to find out why our loading fee payments are not being posted on a timely basis.

December:

Payments - \$0.00 Receipts - \$694,289 State Lead - \$1,228,894 Responsible Party - \$465,395

Operating transfer - \$510,608
Work plan liabilities - \$11,169,357

Reserve \$1,000.00
Un-obligated - \$1,878,893

Mr. Chavarria, "Being that this problem is not corrected and the un-obligated fund balance is zero, what will happen to proposed projects?"

Mr. Davis, "To my understanding under the 'Groundwater Protection Act and the statutory requirements for administering the CAF. If the un-obligated balance drops down, we have to stop writing work plan approval letters; we can not obligate money even if we know that the money has been received by the Taxation and Revenue Department, if it is not posted to the account.

Ms. Gary, "I think we have 20 days from now (the end of January) to get DFA to deposit those delinquent PPL transfers. When I do my January 31st un-obligated fund balance, I will see to it that it is a positive number.

Chair "Lets make sure that happens, because we know the money is there and it is not posted into the SHARE accounting and we cannot stop or delay work plans for doing clean ups. Donna, could please send a notice to the Committee as soon as the funds get posted and those listed on our interested parties list?"

Mr. Chavarria, "Is there something that this Committee can do in a draft letter or document to support this issue be clarifying our concern that a stop work may occur?"

Ms. Gary, "A letter would at least establish a record that this problem was recognized ahead of time and there was an attempt to deal with it. That might be a good idea."

Chair, "I like the idea of doing a letter. Joe, why don't you do that as a motion."

**Action: Mr. Chavarria would like to make a motion to draft a letter stating the concern we have with the un-obligated posting of funds.
Mr. Briggs seconded. Motion passed unanimously.**

Ms. Gary, "On a bright note we continue to deal with issues with SHARE and are making some progress with payment turn around. October payment 93% paid within 60 days, average was within 38 days. November payments 98% paid within 36 days and December payments 99% paid within 33 days. Things are improving at least with our payments."

Chair, "Donna have you presented July, August and September to the Committee?"

Ms. Gary, "Yes, by discussion, but I did not provide hard copies."

Chair, "Would you prepare hard copies of these for the committee members and have them posted to the web site."

Item #4 Update on Status on Remedial Action Sites

Joyce Shearer, Manager Remedial Action, presented a status report on Remedial Action Sites and provided spreadsheets for approved work plans.

Work plan approvals October 2006;

50 RP Workplan approvals: \$934,552.29
50 RP Addendums: \$ 481.23
Totaling: \$935,033.52

15 SL Workplan approvals: \$218,195.95
17 SL Addendums: \$ 293.49
Totaling: \$218,489.44

Monthly grand total of \$1,153,522.96

Work plan approvals November 2006;

37 RP Workplan approvals: \$843,833.36
45 RP Addendums: \$ 454.22
Totaling: \$844,287.58

9 SL Workplan approvals: \$339,039.94
4 SL Addendums: \$ 25.44
Totaling: \$339,065.38

Monthly grand total of \$1,183,352.96

Work plan approvals December 2006;

50 RP Workplan approvals: \$784,582.46
23 RP Addendums: \$ 192.72
Totaling: \$784,845.18

5 SL Workplan approvals: \$74,376.96
2 SL Addendums: \$ 8.59
Totaling: \$74,385.55

Monthly grand total of \$859,230.73

There was discussion on various selected sites regarding the approved work plans.

In the process of preparing for the upcoming legislation session, we have been looking at some of our statistics. Approximate numbers within the past year we have approved installation or excavation disposal projects to eleven sites. We also currently have in progress requests for proposals 13 additional sites. We continue to try to identify sites where remediation is necessary to get those moving in the pipeline.

Chair, "You mentioned the upcoming legislature and I often get asked 'Do we really need to keep doing these clean ups?' and of course I say yes we do. The numbers I use by memory and I do not know if they are accurate, are about 1,000 leaks that we are aware of and about half of them we are actively working on. About another 500 that are out they're that we need to get going on. Is that a ballpark figure that works?"

Ms. Shearer, "Yes."

Chair, "Some of the members also say that these leaks all happened decades ago and there are no new leaks. I informed them that we find around 40 year, is that a ballpark number or can you get me amore accurate number."

Ms. Shearer, "We receive about 40 to 50 reports a year and we also close out between 40 to 50 sites per year. As far as new releases and NFA's, we are at about steady state, but that still leaves us with 1,000 that require some sort of intervention."

Item #5 Update on Prevention and Inspection Program

Kalvin Martin, Program Manager, reported that the Prevention Inspection Program, along with continuing ongoing compliance inspections and inspector presence at installations and tank closures; have new challenges presented to us, because of the proposed changes to our regulations. We have initiated meeting on a regular basis with a work group of core inspectors, and have met on two occasions. The discussion topics include clarifying existing rules and proposed amendments to our regulations that are being mandated by the Energy Policy Act. These changes will be presented at upcoming stakeholders meetings.

Delinquent Tank Fees Program:

This activity has slowed slightly because of some of the other activities we are involved in. As the spreadsheet shows, we have reconciled 98 cases, collecting \$90,919.61, and considered uncollectible another \$584,817.12. Jennifer Pruett over sees this program and currently has been working to help us draft the regulations as well as managing the Accounts Receivable Project, which are the delinquent fees that we assessed in September 2006 for first time delinquent owners.

Accounts Receivable Project:

Jennifer Pruett, Manager, reported that they had not had reconciled an account receivable account before, because of problems, which was a concern with our external auditors. I have met with the auditors and we came to an agreement that we would track for the year an amount determined that is owed for this year. As I am discovering it really is not first time delinquent owner fees, it is those owners that owe for one year. I also discovered that some of them pay late every year and I am keeping a list to address them with repeat offender compliance order within the next fiscal year. On the spreadsheets you will see that for 87 of these invoices to date, about 56 have been paid. Out of the \$25,765.18 owed, we collected \$17,485.00 leaving a balance of \$8,056.25

Personnel Matters:

Kalvin Martin reported that one of his inspectors, Joseph Romero, has retired and we have submitted the paper work to advertise his position in the hopes to hire by the end of January.

Chair, "Are you going by any other means to advertise this position?"

Mr. Davis, "No we have not, but I think we are locked into Share and SPO and we are required to go through their process and I don't believe the agency has something like that but I can be wrong."

Chair, "I think we can put an ad in the papers to have those interested log onto Share to apply. We can also send notice to Universities, Contractors or any one else just as long as we get the word out."

Mr. Pynes, "Do we have to fill this position being that the tank population continues to decline?"

Mr. Davis, "yes we do, because of the Energy Policy Act requirements we will need the help."

Item #6 Update on Regulation Process

Jim Davis, Bureau Chief, has proposed that there be only one packet made by one individual. There are two memos for discussion. The one dated for today, January 10, 2007 addressed to the committee from Mr. Davis regarding the statues of the regulation revisions. We are looking at a number of things such as; changes to the AST regulations, secondary containment, existing language on the federal SPSS regulations, try to align our regulations with new state wide fire codes with respect to the AST requirements, change a variety of definitions, clarify closure requirements and require annual line testing.

The Federal Act, 'implementation of the delivery prohibition 'on a facility basis rather than per tank basis, the NM Department of Agriculture has the responsibility to red tag dispensers. We will have to begin to inter act with Petroleum Transport Companies on the rural part of the state. We have large sections through out the state that service by very small numbers of retail facilities, so there will be different criteria for rural facilities. Secondary containment requirements for storage tank systems within 1,000 feet of water wells and water systems repair vs. replacement and pre notification requirement.

We want to look at other proposed changes to the regulations, such as; tank registration fee payment process, remedial action program looking at site investigation remediation requirements in part 12. In part 17 in terms of 24 months to submit payment. We want to strengthen our ability to reject claims for reimbursement based on timing and technical reasons. Finally, we do find tanks that we would like to be able to remove. We would to in a way to recover the money.

Chair, "Most of these are required by the Federal Energy Policy Act and some are also clean up and things that we are deciding to do as well, is that correct?"

Davis, "Yes Mr. Chairman n – the timing is being driven by the Federal Act.

Mr. Rael, "You mentioned Delivery Prohibition, is that to comply with the Federal Act or is it the compliance of the Federal Act? What I do not understand is that in the rural areas where there is only one gas station in town, why would the rule not apply being that there is existing wells in the rural areas more then there is in the (?)"

Mr. Davis, "The Federal Act recognizes that if a person has to drive 50 miles one way just to get gasoline, then they allow for a different determination at to weather or not they shut down the facility immediately, Calvin can speak more into it."

Mr. Martin, "The tank owner would not be excluded for the rule; however, they will be given more time to comply. The grant guidance given to us by EPA recommends that instead of imposing the Delivery Prohibition immediately, they would allow an additional six months to comply."

Chair, "Do we have discretion to how many months we can submit or it that one way we have to comply?"

Mr. Martin, "I believe we do have some discretion, if we wanted to."

There was discussion on how this would affect the state, the contractor's and the reimbursement of claims. There was a notice sent out in September informing the contractor's & tank owners of administrative changes. One is that we will no longer pay partial deliverables. We also want to make sure that regulatory language is clear and as unambiguous as it can be in terms of the various processes.

Unknown, "What method of notification are you utilizing to inform people of the Stakeholders Meetings?"

Mr. Davis, "This is addressed in the second memo for discussion. We have proposed a schedule and we do not have any set locations for these meetings. We want to have a draft of the regulations available for review by February 7th. This memo is also addressed to Ms. Carol Parker, Attorney with NMED Office of General Council. There was a question concerning having attorney services and she is the one that has been assigned to us. We have met with Ms. Parker twice already and she is beginning detailed legal analysis of several of these points. Under the Delivery Prohibition, we will need to do some statutory changes. In a year from now we anticipate addressing the legislature with amendments to the Groundwater Protection Act. We are establishing some internal deadlines for ourselves to keep moving forward. We anticipate starting a round of Stakeholder Meetings toward the end of February. There are a several way we have to contact people; 1.) Through this committee. 2.) Post on the NMED/PSTB web site. 3.) Send out an e-mail to our interested parties listing. 4.) A mail out to the tank owner's and contractors. Our initial effort will be to notify everyone with a topic list and allow those to self select which meeting they will need to attend.

Unknown, "I am concerned about those people in rural parts of the state. Do they actually have access to e-mail and internet in order for them to have this knowledge of the upcoming meetings?"

Mr. Davis, "That is a very good point and I appreciate your concern. We sometimes make the assumption that because we have access to search web sites and e-mail that others do as well. This is something we will look into."

Unknown, "Who will be contacted to be put on the e-mail list?"

Mr. Davis, "The main person will be Jennifer Pruett, however people can contact anyone within the bureau and we will forward their information to Jennifer."

Item #7 Approval of November 15, 2007.

**Action: Mr. Pynes moved to approve the minutes as amended.
 Mr. Chavarria seconded.
 Motion passed unanimously.**

Item #8 Other Business

None.

Item #9 Next Meeting is March 28, 2007.

After discussion, the Committee decided the next meeting of the Storage Tank Committee will be held in Santa Fe, New Mexico, on March 28, 2007 at 10:00 a.m.

Item #10 Adjournment

The meeting adjourned at approximately 11:40 am.

**Action: Mr. Rael moved to adjourn the Meeting.
 Mr. Briggs seconded.
 The motion passed unanimously.**

Petroleum Storage Tank Chairman