

1 **STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT**
2 **STORAGE TANK COMMITTEE**
3 **HAROLD RUNNELS BUILDING**
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9
10 **DRAFT**
11 **Minutes of the April 18, 2007 Meeting**

12
13 ***Note: This is only the drafted minutes; the approved minutes will be posted when
14 approved at the August 22, 2007 meeting.

15
16 The meeting of the Storage Tank Committee (STC) was held at the NM State Public Education
17 Building, Mabry Hall Auditorium, on the NW corner of De Vargas Street and Don Gaspar,
18 across the street from the Supreme Court Building and next to the Bataan Building, Santa Fe,
19 New Mexico 87505 on April 18, 2007. Chair Jim Norton called the meeting to order at 10:10
20 A.M.

21
22 **Members Present:**

23
24 Jim Norton, Chair
25 Ryan Briggs, STC Member
26 Ronnie Pynes, STC Member
27 Joseph Chavarria, STC Member
28 Paul Aguilar, STC Member
29 Ruben Baca, STC Member

30
31 **Members Absent:**

32
33 Wilfred Rael, STC Member (deceased)

34
35 **Other Representatives Present:**

36
37 Donna Gary, EPD Justin Ball, Kleinfelder
38 Jim Davis, NMED/PSTB John Casey, Basin Engineering
39 Kalvin Martin, NMED/PSTB Kyle Kerr, Envirotech, Inc.
40 Joyce Shearer, NMED/PSTB Brad Billings, BAI
41 Lorena Goerger, NMED/PSTB David Wagner, Western Technologies
42 Jennifer Pruett, NMED/PSTB Andy Freeman, Hall Environmental
43 C. Tyler Irwin, CDM Pinu Stout, ENIPC, Env.
44 R. J. Dally, Thriftway

45
46
47 **Item #1 Roll Call**

48
49 The PSTC Administrator took the roll and noted a quorum was present.

50 **The Chair, requested a moment of silence in honor of A. Wilfred Rael, Committee**
51 **Member, who passed away a few months ago.**

52

53 **Item #2 Approval of the Agenda**

54

55 **Action: Mr. Briggs moved to approve the Agenda as presented.**

56 **Mr. Chavarria seconded. Motion passed unanimously.**

57

58 **Item #3 Update on Corrective Action Fund**

59

60 Donna Gary, Manager of the Office of Finance and Budget, provided an update on the progress
61 of the SHARE database. Ms. Gary indicated that things are looking better and that the Petroleum
62 Products Loading Fees are back on schedule and that we are getting them timely. There are still
63 some inexplicable things that happened. If you recall that on October 17, 2006 and December
64 15, 2006, the checks issued did not get posted to SHARE and in February SHARE stopped
65 posting checks all together. These problems were resolved and currently things are looking
66 good. Ms. Gary also presented an update on the Corrective Action Fund to the Committee for the
67 months of:

68

69 **January:**

70 Payments - \$909,890 Receipts - \$1,705,644 State Lead - \$106,628 Responsible Party -
71 \$803,263

72 Operating transfer - \$510,608 Reserve \$1,000.00

73 Work plan liabilities - \$18,137,765 Un-obligated - \$5,072,587

74

75 **February:**

76 Payments - \$1,121,637 Receipts - \$1,614,771 State Lead - \$360,298 Responsible Party -
77 \$761,340

78 Operating transfer - \$510,608 Reserve \$1,000.00

79 Work plan liabilities - \$18,120,291 Un-obligated - \$5,689,015

80

81 **March:**

82 Payments - \$319,179 Receipts - \$1,555,037 State Lead - \$102,090 Responsible Party -
83 \$217,179

84 Operating transfer - \$510,608 Reserve \$1,000.00

85 Work plan liabilities - \$18,845,540 Un-obligated - \$5,323,493

86

87 (Handouts provided; see www.nmenv.state.nm.us/pstc for entire monthly report)

88

89 The Chair asked why the March payments were so low. Donna explained that it could be a
90 combination of new SHARE duties given to staff (receipting, vouchering and doing first
91 approvals), being short one person and fewer claims coming in the door. Ms. Gary informed the
92 Committee that they had sent out a reminder letter to consultants and tank owners to get their
93 claims in on time for end of fiscal year. Ms. Gary also indicated that they had asked the Program
94 Managers to shorten their time frame on reviewing and to try to get the claims back to OFB
95 sooner. They had also asked ASD to try to process these claims quicker.

96

97 The Chair addressed the Committee and the audience recalling the problem with the Taxation
98 and Revenue Department (TRD) not posting our money to our account. It was decided at the
99 January 10 meeting that the Committee would draft a letter requesting that TRD process our
100 money to our account. Before we could send out the letter, the Taxation and Revenue
101 Department had posted all of our money. This resulted in the Chair's decision not to send the
102 letter, and we have not any problems with the posting since then.

103
104 Per the Chair's request, Ms. Gary had sent out an e-mail to the committee members and the
105 audience informing them that we were caught up on the posting of the loading fees.

106
107 The Chair asked Donna to tell the Committee Members and the audience about the amount of
108 money we have authority to spend for this contract work and then how much we need to seek for
109 a Budget Adjustment Request (BAR).

110
111 Ms. Gary explains that Budget means permission to spend. It is not cash and historically we had
112 budgeted \$18 million and we may spend less than that. This year, our request for FY07 was \$15
113 million. \$11 million for Responsible Party payments and \$4 million for State Lead payments.
114 We are approaching the end of the fiscal year and we are able to pull from the database what we
115 owe for each contractor for deliverables to be completed on June 30th or before. We will be
116 doing a BAR increase of four million dollars based on that projection. That is what we look at
117 and we are aware that deliverables may be delayed.

118
119 Mr. Jim Davis explained that they calculated the need for an additional four million based on the
120 calculation of deliverables that are due from now towards the end of June.

121
122 Mr. Ronny Pynes asked if this is the effort we are taking to avoid what we encountered last fiscal
123 year when there was a panic and concern from contractors getting paid.

124
125 Mr. Davis's answer was yes and he explained that the money from the BAR would be split
126 between State Lead, Responsible Party, & Emergency Response Contracts.

127
128 The Chair instructed Mr. Pynes to look at the year to date numbers to show that last year at this
129 time of year we spent \$13.5 million and this year \$7.5 million. Last year was different due to the
130 big Graves clean up. Last year our budget authority was \$18 million and this year it is \$15
131 million.

132
133 Mr. Davis informed the Committee that by the time we meet again in a couple of months we
134 anticipate that the \$7.5 million listed on the year to date will be a much larger number.

135
136 Mr. Ryan Briggs wanted to know if this BAR affects future budget requests.

137
138 Mr. Davis indicated that next year's budget of \$12 million was set in the legislature about two
139 months ago. This is one of the reasons why we want to pay out as many claims by the end of
140 this fiscal year.

141
142 Ms. Gary informed the Committee that we would more than likely ask for a budget increase for
143 FY08, because historically we have been spending more than \$12 million. It should not be a

144 problem when LFC and DFA ask if we have the cash behind it, we can inform them that we do
145 and that we clearly have the clean ups that need to be paid.

146

147 Mr. Joe Chavarria wanted to know if by pre-approving or authorizing clean ups before the
148 money is there if we could we be shooting ourselves on the foot.

149

150 Mr. Davis's answer was no and explained to the committee that because of the way we're
151 required to manage the fund we cannot obligate money unless cash is in the bank and we can not
152 over obligate the fund. Because the fund operates on cash basis we cannot over obligate it.

153

154 Ms. Gary explained that behind every budget there has to be uses and sources – uses are
155 expenditures and sources are your revenues, and you have to show that the revenues will be there
156 to cover the expenditures.

157

158 Mr. Chavarria wanted to know if you already had a set budget for this fiscal year and you are
159 almost over that budget now and you want \$4 million. How did you go over your budget if you
160 anticipated your budget already and now you need it \$4 million to complete the fiscal year? Did
161 you over obligate projects?

162

163 Mr. Davis said no and explained again that you cannot obligate if you do not have the cash is in
164 the bank. As Ms. Gary pointed out that budget are the authority to spend and the legislature sets
165 budget authority limits for all state agencies. However, this particular fund is recognized as
166 being different and in HB2 (The General Appropriation Act) there is specific language that
167 recognizes the need for a budget adjustment request.

168

169 Ms. Gary explained that in a normal operating budget the legislature or your council will say
170 "you've got \$10,000 to spend on paper and we are going to budget you \$10,000", so you go and
171 spend that \$10,000 and it's pretty certain that those expenditures are controllable and you know
172 exactly what you can spend. If you need to spend more than \$10,000 you take it from another
173 budget item and you make a budget adjustment. The nature of the beast is very different for
174 cleanups and the Legislature knows that even though they give you budget authority for \$12
175 million, you may have emergencies and unexpected costs. They give you the flexibility in the
176 General Appropriation Act to ask for a budget increase for clean ups. There is no cap and you go
177 in and ask for the budget to cover your anticipated expenditures. These cleanups are somewhat
178 uncontrollable and unanticipated expenditures and they recognize this and they will give you the
179 leeway to increase your budget to meet your unanticipated expenditures.

180

181 Mr. Chavarria asked how many of these can be done in a year?

182

183 Ms. Gary informed the Committee they can do as many as needed, but with fiscal planning it
184 should be limited to one maybe two because you try to anticipate the right amount of budget you
185 will need.

186

187 Mr. Ruben Baca indicated that under the HB19 program the expenditures stay pretty consistent
188 except for OGC and wants to know if the money that is going to the General Counsel for the
189 lawyers is all being used for CAF projects.

190

191 The Chair explained that some of it is to help the Petroleum Storage Tank Bureau but some of it
192 is also for other water needs, such as surface water, ground water and hazardous waste when
193 there is a water nexus and that sort of thing. It is used for legal issues on water.

194 Mr. Baca explained that he brought this up because the session just ended and he was drilled a
195 couple of times by a couple of senators that wanted to know how much money was being taken
196 out for legal services. Mr. Baca did inform the senators that he did not know the exact amount
197 because he did not have the figures with him but informed them that yes some of the money was
198 being taken out and that HB19 gives them the authority to do that.

199
200 Ms. Gary indicated that she did change the analysis per the Chair's request to break out what
201 percentage was being spent for FY07 under HB19, which is 17.2% out of the available 30%.

202
203 R. J. Dally wanted a clarification on the YTD payments for 05 a drop of about a million in a half
204 between February and March everything else goes up and does the \$12 million budget for next
205 year include the operating budget and if that is the case is \$6 million available remediation
206 payments?

207
208 Ms. Gary apologized because the report was incorrect. In January the YTD read 8.7 Million, in
209 February 9.4 million, and in March it has to be more than 7.9 million it has to be 10 million plus.

210
211 R. J. Dally wanted clarification about the \$12 million budget set by the state legislature and the
212 operating budget is still \$6 million and the operating transfer is over \$500,000 a month does this
213 mean there is only \$6 million left for payments next year?

214
215 Mr. Davis explained that the operating transfers do not hit the budget authority they have no
216 effect on the \$12 million budget authority is for both the responsible party and state lead
217 payments. The operating transfers hit cash balances so they remove cash and it does not affect
218 the budget authority. The amount of \$12 million is for the beginning July 1 for FY08.

219
220 Mr. Baca asked why the budget authority of \$18 million for FY06 was reduced to \$15 million for
221 FY07 and now been reduced to \$12 million for FY08.

222
223 The Chair explained that the request of \$12 million was based on the assumption that the whole
224 30% was going to be used for water and matching funds needs and it was also based on an
225 analysis of our historic spending patterns and we wanted to keep it at the historic level.

226
227 Mr. Chavarria wanted to know what the average budget carries over is to the next fiscal year.

228
229 The Chair explained that in the past years we have asked and gotten really pretty high amounts to
230 spend with the idea that we would not need to go in and ask for a BAR. We usually got \$18
231 million and there were times that we left a couple of million on the table. It didn't really matter
232 because it was budget authority to spend and what really mattered was these numbers that we
233 look at to make sure we have the money in the bank. In recent years its been getting more close
234 to the actual expenditures that we will be spending which I think is good fiscal management. So
235 DFA and LFC are looking at it more closely and they are keeping us within a narrower budget.
236 So when there is budget on the table it is just authority to spend the money it is not really
237 something that matters in the way that a checkbook does.

238 Mr. Chavarria is concerned because you have to go through two different levels to get that
239 budget approved and they look at your audit and say you request \$4 million last year and you do
240 not spend it so why do you want an additional \$4 million.

241 Ms. Gary said that if she had to provide justification she would indicate that cleanups are
242 uncontrollable, unavoidable and unanticipated and because of that we do not have solid control
243 as to what costs we would incur. And the legislature recognizes that in the General
244 Appropriation Act since it clearly reads that if you need more budget because you had
245 emergencies and costs are going to be higher then there is the authority to request a budget
246 increase.

247

248 **Item #4 Update on Status on Remedial Action Sites**

249

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

252 Work plan approvals January 2007;

253 57 RP Workplan approvals: \$1,731,342.86 13 SL Workplan approvals:
254 \$143,695.04

255 32 RP Addendums: \$ 221.97 6 SL Addendums: \$ 63.09

256 Totaling: \$1,731,564.83 Totaling: \$143,758.13

257

258 **Monthly grand total of \$1,875,322.96**

259

260 Work plan approvals February 2007;

261 58 RP Workplan approvals: \$1,403,463.01 13 SL Workplan approvals:
262 \$161,060.40

263 42 RP Addendums: \$ 330.57 2 SL Addendums: \$ 11.27

264 Totaling: \$1,403,793.58 Totaling: \$161,071.67

265

266 **Monthly grand total of \$1,564,868.25**

267

268 Work plan approvals March 2007;

269 51 RP Workplan approvals: \$1,351,175.41 7 SL Workplan approvals:
270 \$206,224.15

271 18 RP Addendums: \$ 198.78 4 SL Addendums: \$ 36.53

272 Totaling: \$1,351,375.19 Totaling: \$206,260.68

273

274 **Monthly grand total of \$1,557,634.87**

275

276 PSTB showed an aerial photo of the town of Penasco where back in December a resident of
277 Penasco called the Drinking Water Bureau reporting that they had gasoline tasting water and
278 petroleum vapors in their homes. PSTB went with DWB to Penasco to gather samples along the
279 water line. Ms. Shearer indicated the various areas along the water line that samples were pulled
280 from and what the results of these samples where. Ms Shearer had also reported that a there is a
281 detection of some petroleum products in a section off of the water line. The A-1 Auto Site seems
282 to be where the source of the contamination. PSTB was informed by some of the home owners
283 in Penasco that they believe the UST's at this particular site are still there. We have provided
284 kitchen tap water filters for the 12 homes that we detected petroleum product contamination.

285 The owners have requested to have filters placed through out their homes and we have ordered
286 and received the filters and we are hoping to complete installation by the end of next week.

287
288 Our plan for this after speaking with DOT being that this is a State Highway is to try get as much
289 of the contamination cleaned up as possible in one attempt because DOT does not want us
290 digging up their road more than once. PSTB will do more investigation in other areas along the
291 water line and to replace the water lines. At this point it is estimated that we will have to
292 excavate about 12,000 cubic yards of contaminated soil, replace 700 feet of water line and
293 replace the service lines to the residences. The estimated cost for this based on a worst case is
294 about \$2.9 million.

295
296 Mr. Davis has asked Mr. Chavarria to help get in touch with Picuris; we have contact
297 information but have been unsuccessful in contacting anyone. About 40 feet of the water line
298 that needs to be replaced is on Picuris Pueblo land.

299
300 Mr. Chavarria said there is a representative here and she represents the Eight Northern Pueblos
301 Council and she would be the best contact.

302
303 The Chair wanted to know what PSTB is going to do to notify all of the citizens of this town
304 about what will be happening to avoid cause of alarm.

305
306 Ms. Shearer informed the committee that there was a public meeting in Peñasco about a week or
307 so ago. Daniel B. Stevens & Associates presented this plan on our behalf. It was attended by
308 most of the residence that have been affected. PSTB has been talking to the residents and they
309 are assuming that they are communicating amongst each other. We have posted public notice
310 through the Santa Fe New Mexican newspaper and our web site. We should have another public
311 meeting to advise the community of road detours and so forth.

312
313 Ms Shearer indicated that sometimes Owners, Operators and Consultants have issues that they
314 cannot resolve with their project managers. They are reluctant to call Ms. Shearer and they are
315 not sure what to do. So PSTB has assigned a Facilitator in the Bureau to be the first contact for
316 anyone who has a problem that they are not able to resolve with the project manager. This
317 Facilitator will be Jeff Mills he is one of the Santa Fe Team Leaders and his phone number is
318 (505) 984-1817.

319

320 **Item #5 Update on Prevention and Inspection Program**

321
322 Mr. Calvin Martin, Prevention Inspection Program Manager, reported on a couple of topics. One
323 is that they have had a lot of turnovers lately. They have had four resignations in Prevention
324 Inspection and Tank Fees Program and a transfer of a position. We have been working on hiring
325 five positions since January. We have filled two of the vacancies. For the Tank Fee position we
326 hired Bertha Aragon and a new inspector started in Las Cruces last week by the name of
327 Timothy Matson. We transferred a position to Farmington and Tom Gray accepted our offer.
328 There are three more vacancies, one is the Supervisory Position in Santa Fe, we will be
329 advertising for an inspector position in Farmington, and we are currently interviewing for
330 Inspector position in Albuquerque.

331 During the last meeting Mr. Ronny Pynes had brought up the question of how do we compare
332 with other states the number of inspectors vs. the number of facilities inspected? Mr. Martin
333 conducted a telephone survey with his counter parts with the neighboring states. We compare
334 quite well with Oklahoma. Oklahoma has twice as many tanks that we have and they have twice
335 as many inspectors that we have. In New Mexico we currently inspect over 2,100 facilities and
336 Oklahoma has 12,000 tanks and I do not know how many facilities lets assume the same kind of
337 proportion I would say that they may have 4,500 facilities and they have 22 inspectors and we
338 have 12. In Arkansas and Louisiana they also have around 4 to 5 thousand facilities each.
339 Arkansas maintains the about the same number of inspectors that we have however they have
340 twice as many facilities and they try to inspect a facility every three years where we try to do
341 ours once a year. Louisiana is pretty much the same as Arkansas. I believe Colorado has about
342 8,000 tanks and 13 inspectors and they do not inspect tanks at the same frequency that we do.

343
344 PSTB will be mailing out tank fees on the last week of May to about 900 owners.

345
346 Mr. Pynes is requesting a written and more detailed analysis that we can look at for the next
347 meeting.

348
349 Mr. Baca is also requesting a print out of the number of tanks and facilities to be provided in the
350 packets for the upcoming committee meetings.

351
352 **Item #6 Update on Regulation Process**

353
354 Mr. Jim Davis, Bureau Chief briefed the committee on the effort of the bureau for the next two
355 years on the status of the process of the regulation revision.

356
357 Jennifer Pruett, Tanks Fees Staff Manger presented a power point presentation on the steps that
358 the bureau has taken and will be taking to revise the regulations. A handout was provided in
359 order to follow the presentation. The presentation covered the proposed revisions to parts 1-5,
360 and the status & schedule of the stakeholders meetings. The proposed revisions include changes
361 to definitions, registration, annual fees, tank system design, construction, installation, operation
362 and maintenance. The Bureau is also working on revisions for parts 6, 8 & 14.

363
364 **Item #7 Approval of January 10, 2007 Meeting Minutes**

365
366 **Action: Mr. Aguilar moved to approve the minutes as amended.**
367 **Mr. Chavarria seconded.**
368 **Motion passed unanimously.**

369
370 **Item #8 Other Business**

371
372 None.

373
374 **Item #9 Next Meeting is June 20, 2007.**

375
376 After discussion, the Committee decided the next meeting of the Storage Tank Committee will
377 be held in Santa Fe, New Mexico, on June 20, 2007 at 10:00 a.m.

378 **Item #10 Adjournment**

379

380 The meeting adjourned at approximately 12:15 pm.

381

382 **Action: No Motion taken**

383

384

385

386

387

388

Petroleum Storage Tank Chairman