

**STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
STORAGE TANK COMMITTEE MEETING
Toney Anaya Building, Rio Grande Room
2600 Cerrillos Road
Santa Fe, NM 87505**

June 12, 2009 Minutes

The meeting of the Storage Tank Committee was called to order by Mr. Jim Norton, Chair, at 10:18 a.m.

Members Present:

Jim Norton, Chair
Ryan Briggs, STC Member
Paul Aguilar, STC Member
Ruben Baca, STC Member
Ronnie Pynes, STC Member
Joseph Chavarria, STC Member

Others:

Jim Davis, NMED/PSTB
Lorena Goerger, NMED/EPD
Joyce Shearer, NMED/PSTB
Marlene Cordova, NMED/PSTB
Leann Chavez, NMED/EPD
Jennifer Pruett, NMED/PSTB

Susan von Gonten, NMED/PSTB
Michael Hannigan, Basin Engineering
John Casey, Basin Engineering
Marcia Pincus, SCS Engineers
Michelle Aubel, LFC
David Wacwer, Western Technologies
Bill Brown, Brown Environmental
Kalvin Martin, NMED/PSTB

Item #1 ROLL CALL

Roll call was taken and it was determined a quorum was present.

Item #2 APPROVAL OF THE AGENDA

Mr. Aguilar moved, seconded by Mr. Baca, to approve the agenda as presented. Motion passed unanimously.

Item #3 APPROVAL OF DECEMBER 12, 2008, MINUTES

The Chair called for a motion regarding approval of the December 12, 2008 meeting minutes.

Mr. Briggs moved, seconded by Mr. Pynes, to approve the minutes of the December 12, 2008 meeting.

Mr. Briggs referred to page seven, second paragraph, and inquired whether the language should be changed to read "decrease in the amount of compliance rates" as opposed to "decrease in compliance rates".

Mr. Davis stated the minutes were correct as presented. He explained that the program has increased the level in which inspections are being done and as a result has noted more instances of non-compliance; therefore, this has resulted in a statistical decrease in the level of compliance. We are doing the same

number of compliance inspections; however, we are documenting all violations whether minor or major in nature.

There were no further comments. Motion carried unanimously.

Item #4 CORRECTIVE ACTION FUND UPDATE

Mr. Norton asked Ms. Marlene Cordova, Finance Manager, to proceed with her report. Ms. Cordova noted that numbers include a monthly cash deposit in the amount of \$1,901 submitted by Thriftway as part of a settlement agreement. The last payment will be in October 2009. She added that the January and March operating transfer numbers reflect two months; thus the transfers for February and April are zero.

Mr. Chavarria questioned why there were discrepancies between the operating transfer listed in the July 2008 spreadsheet and the operating transfer for July 2008 listed in the January 2009 spreadsheet. Ms. Cordova stated that there appeared to be typographical errors and that she would need to do further research to confirm the numbers. She explained the monthly operating transfer is \$737,711 except for those months where it is doubled. It was requested that corrected spreadsheets be provided at the next meeting and that the Bureau's Administrative Service Department be contacted about why the operating transfer is doubled in certain months.

Mr. Davis stated the usual transfer is \$737,117 where approximately \$500,000 is allocated to the department and \$237,000 to the bureau. He noted that when July numbers are reported, the monthly transfer dollar amount will be different because the figure is based on 30% of the most recently closed fiscal year. Therefore, the transfer in July of 2009, the first month of FY10 will be based on 30% of the FY08 revenues. He added that he was anticipating a decrease in the monthly draw for FY10.

Mr. Briggs asked staff to explain the \$75,325 payment figure noted in the March spreadsheet. Mr. Davis responded it was a one-time payment as part of a legal settlement made to Faith Engineering utilizing Corrective Action Fund monies.

December 2008

Beginning Cash	\$ 13,961,579	Reserve	\$ 1,000,000
Loading Fee	1,821,756	Work plan liabilities	9,813,274
Payment	(981,931)	Un-obligated	3,252,914
Operating Transfer	(737,117)		
Ending Cash	\$ 14,066,189		

January 2009

Beginning Cash	\$ 14,066,188	Reserve	\$ 1,000,000
Loading Fee	\$ 1,462,050	Work plan liabilities	9,238,487
Payment	(860,162)	Un-obligated	2,957,256
Operating Transfer	(1,474,233)		
Ending Cash	\$ 13,195,743		

February 2009

Beginning Cash	\$ 13,195,713	Reserve	\$ 1,000,000
Loading fee	1,300,845	Work plan liabilities	\$ 10,851,392
Payment -	(567,760)	Un-obligated	\$ 2,079,337
Operating Transfer	(-0-)	Ending Cash	\$ 13,930,728
Ending Cash	\$ 13,930,728		

March 2009

Beginning Cash	\$ 13,930,728	Reserve	\$ 1,000,000
Loading fee	1,793,303	Work plan liabilities	9,966,924
Payment	(786,533)	Un-obligated	\$ 2,422,918
Operating Transfer	(1,474,234)		
Ending Cash	\$ 13,389,842		

April 2009

Beginning Cash	\$ 13,389,841	Reserve	\$ 1,000,000
Loading fee	1,468,099	Work plan liabilities	10,494,685
Payment	(764,296)	Un-obligated	\$ 2,600,860
Operating Transfer	(-0-)		
Ending Cash	\$ 14,095,546		

May 2009

Beginning Cash	\$ 14,095,545	Reserve	\$ 1,000,000
Loading fee -	1,640,984	Work plan liabilities	10,202,842
Payment	(889,207)	Un-obligated	\$ 2,909,265
Operating Transfer	(737,117)		
Ending Cash	\$ 14,112,106		

Mr. Norton complimented staff for maintaining the stability of both the cash balance and the unobligated balance of the Corrective Action Fund. Mr. Davis thanked Mr. Norton for his comment stating that the Bureau has a solid revenue stream and he does not foresee a drastic fluctuation one way or the other.

It was questioned whether a portion of the un-obligated amount could be re-titled to “emergency fund” because it can be perceived as being available for other uses by the State Legislature. Mr. Davis acknowledged that there could be a perception issue; however, he stated that the monies under this designation are used for routine remediation work necessary throughout the fiscal year. The \$1,000,000 emergency reserve is already taken out of the unobligated balance.

Item # 5 REMEDIAL ACTION SITES UPDATE

Ms. Joyce Shearer, Remedial Action Program Manager, reported that *December* numbers include costs for three of five new remediation systems for Responsible Party (RP) sites. She added that a budget adjustment request (BAR) effective in *March* added more money for State Lead (SL) remediation activities. She added that the March spreadsheet includes two numbers for SL; one for federal grant dollars and obligations and the second for CAF monies. She stated monies were approved for the

installation of a system at the Mike's Auto Detail site in Belen, equipment for a second remediation system at the Cibola Chevron site in Grants, and to re-start a remediation system at the Yale Auto site in Albuquerque. She added that monies were also approved for remediation activities at the Indian Hills site. Ms. Shearer reported that RP monies for *April* include costs to operate and maintain a remediation system at the ABQ Bulk Plant, and a single system to remediate two sites; Save Gas and the Triangle Truck Stop. SL numbers include monies for the installation of a second system at the Cibola Chevron site in Grants, and operation and maintenance costs for the Indian Hills site. *May* RP numbers are mostly for monitoring and assessment reports for new releases in Cimarron, Deming, and Artesia. SL approved costs are for additional installation work and the operation and maintenance of the remediation system at the Maverick Store site in Grants.

It was requested that the number of active sites with release identification numbers below 100 be provided at the next meeting.

Below are the workplan approvals reported by month:

December 2008

<u>Responsible Party</u>		<u>State Lead</u>	
17	\$ 1,282,785.97	0	\$ 0.00
<u>Addendums</u>		<u>Addendums</u>	
0	\$ 0.00	0	\$ 0.00
Total	\$ 1,282,785.97	Total	\$ 0.00
GRAND TOTAL		\$ 1,282,785.97	

January 2009

<u>Responsible Party</u>		<u>State Lead</u>	
24	\$ 391,471.46	2	\$ 4,953.20
<u>Addendums</u>		<u>Addendums</u>	
0	\$ 0.00	0	\$ 0.00
Total	\$ 391,471.46	Total	\$ 4,953.20
GRAND TOTAL		\$ 396,424.66	

February 2009

<u>Responsible Party</u>		<u>State Lead</u>	
24	\$ 1,041,549.71	4	\$ 1,183,797.39
<u>Addendums</u>		<u>Addendums</u>	
1	\$ 436.86	0	\$ 0.00
Total	\$ 1,041,986.57	Total	\$ 1,183,797.39
GRAND TOTAL		\$ 2,225,783.96	

March 2009

Federal Grant Money \$100,000.00

<u>Responsible Party</u>		<u>State Lead</u>	
27	\$ 337,481.47	8	\$ 748,117.89
<u>Addendums</u>		<u>Addendums</u>	
0	\$ 0.00	0	\$ 0.00
Total	\$ 337,481.47	Total	\$ 748,117.89
GRAND TOTAL		\$ 1,085,599.36	

April 2009

<u>Responsible Party</u>		<u>State Lead</u>	
19	\$ 344,649.19	19	\$ 1,012,213.26
<u>Addendums</u>		<u>Addendums</u>	
0	\$ 0.00	0	\$ 0.00
Total	\$ 344,649.19	Total	\$ 1,012,213.26
GRAND TOTAL		\$ 1,356,862.45	

May 2009

<u>Responsible Party</u>		<u>State Lead</u>	
24	\$ 245,086.02	34	\$ 529,055.91
<u>Addendums</u>		<u>Addendums</u>	
0	\$ 0.00	0	\$ 0.00
Total	\$ 245,086.02	Total	\$ 529,055.91
GRAND TOTAL		\$ 774,141.93	

Discussion followed regarding the amount of stimulus money the Bureau would be receiving; specifically how the money would be spent and how contracts would be handled. Ms. Shearer stated that project managers contacted contractors and requested workplans once the Bureau was informed about the stimulus money. In anticipation of such, it was suggested that inactive SL sites be addressed. She added that staff would identify whether there are any sites that would benefit from remediation rather than just monitoring. It was noted that the contracting aspect was a challenge. Mr. Davis stated there were currently contracts in place for SL sites, which will expire in February 2010. The initial plan was to use these existing contracts because staff was under the impression that it needed to have contracts in place in order to obtain the stimulus money. However, staff has been informed to develop sole source justification contracts specifically for stimulus money for transparency and accounting reporting requirements.

There was a question about whether or not the sole source contract would be for the entire phase even if some work had already commenced or whether it would begin with the next phase. For example, if work has already commenced on Phase 1, then would the sole source be for Phase 2 work and beyond. Ms. Shearer stated that the contracts were bid for specific tasks, which are not specified by phase. Mr. Davis stated that it has become a cumbersome process, but nevertheless staff would adhere to requirements of the ARRA as well as direction to proceed with justification for sole source contracts. He stated that the Bureau was scheduled to receive \$1.59 million.

Mr. Norton asked if the current and FY10 legislative budget levels were sufficient. Mr. Davis responded that \$12 million dollars was approved where \$9 million is allocated to RP and \$3 million to SL. He commented that the number was reasonable. He added that a category transfer BAR was done during the current fiscal year which allowed for additional monies for SL.

Item # 6 PREVENTION AND INSPECTION UPDATE

Mr. Calvin Martin, Prevention Inspection Program Manager, updated the Committee regarding the recent number of notice of violations (NOVs) issued by the Bureau. He reported that the number of violations increased from 61 during the past 12-month period to 300. He stated that this has resulted in better compliance statistics and improved documentation of observations in the field. He added at the same time it was getting the owner/operator's attention. He explained that the more stringent approach was in response to the anticipated authority for delivery prohibition, a required provision of the 2005 federal Energy Policy Act, which could be triggered for serious violations based on a single inspection.

Mr. Baca expressed concern about the large increase in the number of NOVs issued. He questioned whether they could be classified as misdemeanors or fourth degree felonies. Mr. Martin responded the majority were misdemeanors. Mr. Davis added that most of the violations would be corrected once the operation and maintenance plans are in place. He stated that he directed staff in December to be more rigorous because he wanted more statistical information and to avoid exercising the delivery prohibition authority if minor type violations could be addressed beforehand.

Mr. Baca stated that the State needs to consider the fact that it is mostly composed of rural areas where often there is only one or two facilities available. He does not want for it to become too cumbersome and expensive to operate. Mr. Davis agreed commenting that there was a provision for increased time for rural and remote facilities allowed to come into compliance. He added that both the cost of coming into compliance as well as the potential for delivery prohibition would have a measureable affect on the economics of running a business.

Mr. Baca asked if there was any way the Bureau could assist with such costs. Mr. Davis stated the fund could not be used for equipment upgrades or tank closure costs; however, there were federal grants that could be pursued. Mr. Baca suggested that the Bureau also look into state funding to assist with the upgrades.

Item # 7 REGULATION PROCESS UPDATE

Ms. Jennifer Pruett, Tank Fee Manager, reported there was no opposition regarding the proposed revisions to Part 17 during the departmental hearing in March. She added the same was true for the changes made to the other parts of the Petroleum Storage Tank regulations heard before the Environmental Improvement Board. All of these changes will become effective June 15, 2009. She stated notices about the new rules were sent to owners/operators as part of the annual invoicing process. She added that stakeholder meetings will be held in the near future, mainly in preparation for implementation of provisions in the new Part 18, Operator Training. A solicitation letter, along with an

application and review matrix was sent to potential training providers in May. She stated that eight providers have expressed interest.

On Accounts Receivable for FY09, Ms. Pruett reported that 54 invoices were delinquent; that 98% were collected with the remaining 2% related to errors in FY09. She added that over 900 invoices were mailed for FY10 and that the Bureau had already received about 1/3 of payments. She also reported that the tank fee collection program had completed 268 cases where most resulted in closing of tanks and owner accounts.

With respect to Installers Certification, Ms. Pruett stated the new rules would only require the national test for the initial certification with respect to this program. She added that requirements would also be broadened to allow tank experience from other states; however, all installers will be required to pass the New Mexico Laws and Rules Test in order to work in the state.

Item # 8 LEGISLATIVE UPDATE

Mr. Davis stated the bureau was not successful during the 2009 Legislative session with respect to SB16. SB16 amended the Ground Water Protection Act and the Hazardous Waste Act to provide authority for delivery prohibition. He noted that the bureau will approach the interim committee on Hazardous and Radioactive Materials for inclusion on their schedule and that the bill will be introduced in the 2010 regular Legislative Session.

HB 19 (leverage of federal funds). Mr. Davis presented the attached spreadsheet that shows the dollar amounts of the HB 19 monies used by various programs across the Environment Department. He noted the total of \$1.4 million in CAF leverages \$3.8 million of federal funds.

Item # 9 NEXT MEETING

The next meeting will be held on August 25, 2009, at 10:00 a.m.

Item #10 ADJOURNMENT

Mr. Baca moved to adjourn the Meeting. Mr. Briggs seconded. The motion passed unanimously.

The meeting adjourned at approximately 12:19 p.m.

PETROLEUM STORAGE TANK COMMITTEE

Mr. Jim Norton, Chairman

Minutes prepared by: Elaine Trujillo

