

**STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
STORAGE TANK COMMITTEE
State Personnel Building
Leo Griego Auditorium
2600 Cerrillos Road
Santa Fe, NM 87505**

Minutes of the September 12, 2007 Meeting

The meeting of the Storage Tank Committee (STC) was held at the NM State Personnel Building, Leo Griego Auditorium, 2600 Cerillos Road Santa Fe, New Mexico 87505 on Wednesday September 12, 2007. Chair Jim Norton called the meeting to order at 10:02 A.M. Mr. Jim Davis announced that Edwina Ferguson was no longer with the Department and that Melinda Trujillo would be helping out in her place today.

Members Present:

Jim Norton, Chair
Ryan Briggs, STC Member
Ronnie Pynes, STC Member
Ruben Baca, STC Member

Members Absent:

Paul Aguilar, STC Member
Joseph Chavarria, STC Member

Other Representatives Present:

Jim Davis, NMED/PSTB
Jeff Mills, NMED/PSTB
Kalvin Martin, NMED/PSTB
Joyce Shearer, NMED/PSTB
Susan Von Gonten, NMED/PSTB
John Kovacs, NMED/PSTB

Lorena Goerger, NMED/PSTB
Jennifer Pruett, NMED/PSTB
Joyce Croker, NMED/PSTB
Phyllis Martinez, NMED/PSTB
Gregoria Archuleta, NMED/EPD

Cathy Baucom, Envirotech, Inc.
Eileen Shannon, Kleinfelder
Teri McMillan, Golder
Brad Billings, BAI
Benjamin L. Hodges, Brewer Oil Co.
David Griffen, Pinnacle Labs

Joe Galemore, INTERA
Jonas Armenta, Dial Oil Co.
Liz Brown, Brown Environmental
Bill Brown, Brown Environmental
John Casey, Basin Engineering
Scott Mckitricle, Souder Miller & Assoc.
RJ Dalley
Scott Hallenbeck, Hall Environmental
David Weaner, WTI
Pinu Stout, Eight Northern Indian Pueblo
Council

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 move item six up to happen after item three. The Chair asked for a motion to approve the agenda.

**Action: Mr. Jim Davis requests to add move up of ‘Update on Regulation Process’ to the agenda.
 Mr. Briggs moved to approve the Agenda
 Mr. Pynes seconded. Motion passed unanimously.**

Item #3 Update on Corrective Action Fund

Jim Norton stated in addition to Edwina Ferguson leaving Donna Gary has also left so Jim Davis will be doing the presentation. Jim Davis stated that Gregoria Archuleta took Phyllis Martinez’s place and that she will be working directly with him on the Corrective Action Fund. Jim Davis presented an update on the Corrective Action Fund to the Committee.

June

Beginning Cash - \$ 17,907,576	Temporary holding by SHARE- \$ 194,538
Loading fee - \$ 1,538,440	Reserve - \$ 1,000,000
Payment - \$ (2,126,241)	Work plan liabilities - \$ 13,881,516
Out of Suspense- \$ 3381	Un-obligated balance- \$ 2,636,177
Operating Transfer - \$ 0	
Ending Cash - \$ 17,323,155	

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

The NMED Cabinet Secretary certified to the Taxation and Revenue Cabinet Secretary the un-obligated fund balance as of June 30, 2007

Mr. Baca wanted to know if the \$194,538 in temporary holding in SHARE was the settlement of a lawsuit and asked Mr. Davis if he was at liberty to discuss any of it.

Mr. Davis’ reply was that he did not think they were under any gag order regarding it.

Mr. Baca asked, is this the lawsuit that was brought upon a retailer for a facility operator on Native American land?

Mr. Davis replied no, this lawsuit was brought against a pump installation and servicing retailer.

Mr. Baca replied what I'm getting at and I think that you're aware of it, is the Tax Department now is in the process of going after facilities on Native American land and charging them the PPL fee. Clear back to the conception of it, now before nobody has ever done this before. But, I know one particular company that was hit for total taxes and penalties about \$480,000.00 and I just wondered if the tax department has made you aware their going to give you this money.

Mr. Baca stated that he felt there will be several more of these that come up. He stated that he personally thought it was taxation without representation because these people have no access to the fund. Unless they reached some memorandum of understanding with your department or start paying the fee.

Mr. Davis replied Mr. Chairman Mr. Baca this is the first I have heard regarding this and thank you for bringing this up. The Taxation and Revenue Department has not refunded that to us, that I am aware of.

Mr. Baca stated I just thought I would bring this up, because I know one of my members that has been taxed and has paid it and he is also paying penalties on it. I also know another one that just got a letter that their going to start doing some penalties.

Mr. Davis replied again thank you for making us aware of this we had not been aware of this.

Mr. Baca stated so the department has not initiated this?

Mr. Davis responded no, we have not. But again I appreciate that you have brought this to our attention and will give you an update at our next meeting.

The Chair wanted to know about the budget for June, and asked is this the close out of the fiscal year 2007.

Mr. Davis replied this is correct.

The Chair, addressed the Committee and the audience, to review at all these meetings because Ruben you had asked that we show House Bill 19 amounts. Which I would like to call everyone's attention to that. At the request of Ruben, Donna and now Jim and Gregoria who will be keeping tallies every month so that they will know what those House Bill 19 numbers are. If you look at the second page it is the very bottom of the row across there and again this is the very end of the fiscal year so it represents the full amount for fiscal year 2007 that was used for House Bill 19. So if you look at that very bottom right number see that 17.26% number that's the percentage of the revenue coming in that the department used in 2007 and as you recall House Bill 19 allows that to be 30% at the maximum that can come out and for 2007 we used 17.26% and we could have used another 12.74% to get up to 30% and I just want everyone to know that we are in fiscal year 2008 now and we are using that additional 13% so we are coming up to the full 30% that can come out of the corrective action fund. Which of course still leaves a very rigorous continued clean up program which is about consistent with what we had in the past decade or so of clean up. I just want to be up front with everyone about what those amounts were for fiscal year 2007 and if you look at the minutes for July you will see we are taking the

additional 12.74%. I just wanted to call everyone's attention back to the first page to the year to date numbers on the bottom right numbers and you can see previous years so if you add all the payments of 2007 we paid \$ 12,103,114 and in 2006 it was \$ 17,012,593 that included the Graves clean up in Farmington. In 2005 it was \$ 13,621,467. Then as far as work plan in 2007 we had \$ 17,179,527 and in 2006 we had \$ 16,014,578 followed by \$ 15,423,659 in 2005. So we are continuing to do work plans and it's a very rigorous clean up program that is continuing in the future as well.

JULY

Beginning Cash - \$ 17,517,693

Loading fee - \$ 1,616,057

Payment - \$ (1,588,459)

Operating Transfer - \$ (768,400)

Ending Cash - \$ 16,776,892

Reserve - \$ 1,000,000

Work plan liabilities - \$ 12,969,442

Un-obligated balance- \$ 2,807,450,

Mr. Baca wanted to know, you went with 17% in 2007 and in 2008 you're going with the full 30%?

Mr. Davis replied yes that is correct.

Mr. Baca wanted to know why they are now going with the full 30%.

The Chair replied because it qualified that we can, House Bill 19 was set up as a creative mechanism for putting more money into cleaning up water and matching federal funds and recording activity for the state.

Mr. Baca wanted to know what are the matching funds on these.

The Chair stated that we could go through each one if you want. The very bottom, and remember this is for the purpose of House Bill 19. Water Use and matching federal funds for underground contamination clean up. First Office of General Counsel a large portion of the docket that the Office of General Counsel is involved in is for the ground water program , septic tank program, drinking water program, construction program which builds water facilities so those are water uses. Hazardous waste does a significant amount of work to protect ground water. This is a portion of the funding. Drinking water, in the environmental protection division does a significant amount of work on overseeing the program. Solid waste they are hydrologists, in the solid waste bureau. Air quality is matching the 105 Grant, it called matching federal funds and OSHA is also matching federal funds in OSHA there is two programs that OSHA Matches.

Mr. Baca wanted to know if the Match was 8 to 1 and if he could see any data for that to support it.

The Chair stated that was fine we could get that data together for him.

Mr. Baca stated he would like to see that at the next meeting.

Mr. Davis asked if he could restate that so that they know exactly what it is he is asking for.

Mr. Baca stated I'm asking for the amount of the match in other words for the PPL fee if I'm giving a dollar what is the match from the federal government.

The Chair replied no problem we will get that for the next meeting.

Item # 6 Update on Regulation Process

Ms. Jennifer Pruett, Tank Fee Manager, provided an update for the Committee on the Bureau's regulation revision effort:

We have asked the Environmental Improvement Board for a hearing on our proposed rule revisions to Parts 1, 2, 3, 4, 5, 6, 8 and 14 on December 4th and 5th in Santa Fe. We have met several times in the last year with Stakeholders from the regulated community, public interest groups, and tank installers, and the proposed revisions have not generated much controversy. Most Stakeholders understand that the proposed revisions are necessary to comply with the requirements of the federal Energy Policy Act of 2005. We provided a copy of the rules and a letter to the Small Business Regulatory Advisory Commission on August 30, noting that while the proposed revisions would have some financial effects on small business owners, those costs are required by the federal Act, so we have little choice in requiring the changes.

Also, we are proposing a few changes to our statutes on storage tanks, to bring us into compliance with current federal law and new requirements of the Energy Policy Act. The 4 requirements are: 1) delete our statutory exemption for tanks serving emergency generators, as federal law requires us to regulate these tanks; 2) add language giving the Board authority to regulate fuel deliverers, a new group for us to regulate that the federal Energy Policy Act required us to implement August 8, 2007; 3) conform our statutory language to federal language on tanks storing heating oil for consumptive use on the premises; and 4) shorten the time for owners to submit claims to the Corrective Action Fund. We will present these draft changes to the legislative Interim Committee on Hazardous and Radioactive Materials on September 20-21 at the Carlsbad Research center.

Ms. Jennifer Pruett then provided a draft letter to Ms. Gay Dillingham, Chair of the Environmental Improvement Board, for the Committee to review and approve; the letter asks the Board to approve the rule revisions proposed by the Bureau.

The Chair requested that the committee take a moment to review this letter so that they can recommend any changes to the letter.

The Chair asked Ms. Pruett to give a quick over view of the draft rule revisions.

Ms. Pruett replied the biggest change in this draft is reformatting and breaking down the rules making it easier to read, and separating AST and UST provisions making those easier for people to find. The other thing is requiring secondary containment for USTs, which is a requirement of

the federal Energy Policy Act. The federal law required states to impose this requirement last February 2007, so New Mexico (and most other states) is behind schedule in implementing this.

The Chair replied, this seems like it's primarily complying with the Federal requirements and then sort of streamlining and cleaning up other parts of the regulations, is that correct?

Ms. Pruett replied, yes that is correct.

Mr. Baca wanted to know if they are trying to bring the backup generators back into the fold.

Ms. Pruett responded that the Bureau does not have authority to do that, not until the statute is changed.

Mr. Baca stated that he had received several phone calls from different entities like hospitals, prisons and places like that that are not regulated by you right now.

Mr. Davis responded and said that in early June the Federal EPA Inspector came to New Mexico to inspect the tanks because of our statutory exemption. Those inspections did occur at hospitals and correctional facilities. We receive year end reports from EPA that highlight this language in our state law and remind us that this is not good. This has been on-going several years in a row.

The Chair suggested that Ms. Pruett add a sentence to the letter with a general overview of the Bureau's Stakeholder process and involvement of the public in the rule revisions.

**Action: The Chair approved a motion to send this letter with the added language.
 Mr. Baca seconded. Motion passed unanimously**

Ms. Pruett presented a quick update on the delinquent tank fee collection program. A handout was provided, and she wanted to point out there was a lot of activity in July and August after annual invoices were sent out. She gave summary as of August 31, 2007: we had closed 149 cases, brought in a little over \$112,000.00 in payments, and we declared just under \$833,000 uncollectible. So, we continue to make progress investigating and closing out delinquent cases.

Item # 4 Update on Remedial Action Sites

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

Work plan approvals for June 2007;
35 RP Workplan approvals: \$1,213,383.74 5 SL Workplan, approvals: \$151,513.18

26 RP Addendums: \$ 246.73 5 SL Addendums: \$ 22.38
Totaling: \$1,213,630.47 Totaling: \$151,535.56

Monthly grand total of \$1,365,166.03

Work plan approvals for July 2007;			
25 RP Workplan approvals:	\$391,037.05	8 SL	Workplan approvals: \$358,979.38
8 RP Addendums:	\$ 112.98	0 SL	Addendums: \$ 0
Totaling:	\$391,150.03		\$358,979.38

Monthly grand total of \$750,129.41

Mr. Baca had a comment, the calls he states he has received from people are PR's and people I've known through association, the feeling out there is that we're not getting any new clean ups going. You're not approving any new work plans, that these people are sitting on valuable pieces of property. Some of these properties are in the process of being sold and they are being held up. I want some kind of assurance that we're going to move along as expediently as we can to approve these work plans and get some of these sites cleaned up. I know you have on going sites, but you can't ignore the new ones that are going to come in.

Ms. Shearer responded, we are not ignoring new sites. When a new release is reported to us, we require that the owner or operator perform a Minimum Site Assessment. Once the extent and severity of the release has been determined, the site is ranked and addressed based on environmental risk.

The chair stated that anyone that wanted a list of clean up sites please contact Joyce Shearer

Item # 5 Prevention and Inspection

Mr. Calvin Martin, Prevention Inspection Program Manager, reported one vacancy in the Santa Fe office. We recently filled an Inspector position in Farmington. We hired Robert Bouren and he started in August. We have hired a clerk for three months to assist tank fee invoicing and file maintenance and to help out with our anticipated move to the new building. Her name is Trina Page; I want to give you an update on the Bureau's submittals that meets the August 8, 2007 deadline outlined in the Energy Policy Act. The EPA required states to 1) meet on-site inspection requirements for all USTs, 2) submit a state compliance report for government owned tanks, and 3) implement delivery prohibition. We met the first two provisions and we are making progress toward meeting delivery prohibition. Delivery prohibition requirement has not been met and we reported that New Mexico expects to meet delivery prohibition in early 2009. I wanted to mention the tank fee program has collected about 80% of tank fees assessed and that has improved from approximately 60% fees assessed three years ago. We will be sending out our 2nd round of invoices to first time delinquent tank owners at the end of September. This will be the 3rd year that we have sent another round of invoices and it has been successful in collecting additional fees, as well as, decreasing the number of delinquent owners.

Mr. Baca replied so you hired a new inspector in Farmington so that makes two inspectors there.

Mr. Martin replied that is correct,

Mr. Baca asked you also mentioned your opening in Santa Fe, so did Joseph retire?

Mr. Martin responded yes, he retired

Item # 7 Approval of the April 18, 2007 and June 20, 2007 Meeting Minutes

**Action Mr. Baca motioned to approve the minutes of April as amended
Mr. Briggs seconded
Motion passed unanimously.**

**Mr. Briggs motioned to approve the minutes of June as amended
Mr. Baca seconded
Motion passed unanimously.**

Item # 8 Other Business

Mr. Baca requested that they get Tank Notes

Mr. Baca requested information on the number of tanks per county and the total counts.

The Chair asked to have the information at the next meeting.

Item #9 Next Meeting is November 26, 2007.

After discussion, the Committee decided the next meeting of the Storage Tank Committee will be held in Santa Fe, New Mexico, on November 26, 2007 at 10:00 a.m.

Item #10 Adjournment

The meeting adjourned at approximately 12:04 p.m.

**Action: The Chair moved to adjourn the Meeting.
Mr. Baca seconded.
The motion passed unanimously.**

Petroleum Storage Tank Committee Chairman