

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

**August 25, 2009 Minutes**

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

**Members Present:**

Jim Norton, Chair  
Ryan Briggs  
Paul Aguilar  
Ronnie Pynes

**Others:**

Jim Davis, NMED/PSTB  
Lorena Goerger, NMED/PSTB  
Joyce Shearer, NMED/PSTB  
Marlene Cordova, NMED/PSTB  
Leann Chavez, NMED/EPD/PSTB  
Kalvin Martin, NMED/PSTB  
Cathy Atencio, NMED/EPD

**Members Absent:**

Ruben Baca, STC Member  
Joseph Chavarria, STC Member

**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. Pynes, to approve the agenda. It was noted that the June 12, 2009, minutes were being presented for approval not *June 12, 2008*. The change was so noted. The motion to approve the agenda as amended passed unanimously.

**Item #3 APPROVAL OF JUNE 12, 2009 MINUTES**

The Chair called for a motion to approve the June 12, 2009, meeting minutes.

Mr. Pynes moved, seconded by Mr. Aguilar, to approve the minutes of the June 12, 2009, meeting as presented. There were no 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 reported that the June numbers include a monthly cash deposit in the amount of \$1,901. The \$3,802 figure in July represents a double and final payment submitted by Thriftway as part of a settlement agreement. She added that there were a total of four state lead workplans issued in **June** in the amount of \$82,382; and twenty-six workplans for RP in the amount of \$1,018,583 with no addendums for either SL or RP. She added there were a total of four state lead workplans in **July** totaling \$985,198, and 32 workplans were issued in RP in the amount of \$601,890. There was one addendum in RP in the amount of \$30.00.

Mr. Jim Davis, Bureau Chief, indicated that the \$3,593,209 un-obligated balance on the June spreadsheet was the dollar amount certified by Secretary Ron Curry for submittal to the Department of Taxation and Revenue to determine the loading fee. He noted that the fee for FY10 was \$150.00/load.

Mr. Norton asked that the \$789,118 listed as “due to fund” on the June spreadsheet be explained. Mr. Davis responded the number represented HB19 monies not expended in FY08. He added that such monies revert back to the fund, and that the figure included both bureau and HB19 monies. Mr. Davis pointed out that expenditures that did not materialize in FY07 totaled \$859,080. This number is shown on the second page of the June spreadsheet.

**June 2009**

Beginning Cash	\$ 14,112,107	Reserve	\$ 1,000,000
Loading Fee	1,529,709	Work plan liabilities	9,870,025
Payment	(1,232,484)	Un-obligated	3,593,209
Operating Transfer	(737,117)		
Ending Cash	\$ 14,463,234		

**July 2009**

Beginning Cash	\$ 14,463,234	Reserve	\$ 1,000,000
Loading Fee	\$ 1,513,953	Work plan liabilities	10,075,388
Payment	(779,111)	Un-obligated	3,376,232
Operating Transfer	(750,258)		
Ending Cash	\$ 14,451,620		

Mr. Davis referred to the June 12, 2009, minutes and noted that the minutes accurately reflected his comments indicating that he anticipated the draw for the new fiscal year to decrease; however, it had actually increased by \$13,000. He explained that HB19 money was based on 30% of the most recently closed fiscal year; therefore, the transfer for July was based on FY08 revenues.

Mr. Norton questioned whether the Bureau was continuing to “scrub the database” in an effort to determine a true representation of the outstanding liabilities. He specifically referenced the \$10 million dollar workplan liability figure on the July 2009 spreadsheet. Mr. Davis spoke about how claims submitted less than the approved amount on the workplan automatically produce a reduction of liability for the difference. This money is then available to be reallocated to other workplans. The only time this does not occur automatically is for utilities and contingencies where money is drawn down on a monthly basis or as needed through the life of the workplan. He added that the database was scrubbed regularly on a project-by-project basis.

Mr. Norton asked what the total amount of the loading fee was for FY09. Ms. Cordova responded \$18,559.47, which represents a decrease from FY08. It was noted the loading fee for FY07 was \$19.2 and \$19.4 for FY08.

Mr. Davis stated it was requested at the last meeting that staff explain why the operating transfer was doubled in certain months. He read an email from Clancy Roberts, Administrative Services Division Chief Financial Officer, which explains the department utilizes special revenue funds to maintain cash where the Corrective Action Fund is one of them. The email further explains that the transfer usually occurs at the

beginning of the month; however, if it is projected to have a negative balance a second transfer occurs. Mr. Davis pointed out the email does not explain why there are no decreases in a given month, but the purpose is to maintain a cash balance with a minimum of twelve (12) draws per year. **(A copy of this email is attached for the record.)**

**Item # 5 REMEDIAL ACTION SITES UPDATE**

Below are the workplan approvals reported by month:

**June 2009**

<u>Responsible Party</u>		<u>State Lead</u>	
26	\$ 1,018,583.01	4	\$ 82,382.32
<u>Addendums</u>		<u>Addendums</u>	
0	\$ 0.00	0	\$ 0.00
<b>Total</b>	<b>\$ 1,018,583.01</b>	<b>Total</b>	<b>\$ 82,382.32</b>
<b>GRAND TOTAL</b>		<b>\$ 1,100,965.33</b>	

**July 2009**

<u>Responsible Party</u>		<u>State Lead</u>	
31	\$ 601,889.92	4	\$ 985,198.28
<u>Addendums</u>		<u>Addendums</u>	
1	\$ 29.94	0	\$ 0.00
<b>Total</b>	<b>\$ 601,919.86</b>	<b>Total</b>	<b>\$ 985,198.28</b>
<b>GRAND TOTAL</b>		<b>\$ 1,587,118.14</b>	

Ms. Joyce Shearer, Remedial Action Program Manager, reported that **June RP** numbers include a \$576,007 workplan for Gasamat 889/559 in Bosque Farms, and that the major workplans for **state lead** include \$31,018 for operation and maintenance costs at Indian Hills/Canyon Auto, and \$44,085 in response to a compliance order at Sandoval Dodge in Las Cruces. Mr. Davis added that the Bureau, based on consultation with general counsel, is addressing the Sandoval Dodge compliance order via a minimum site assessment contract. He stated staff will continue discussions about proceeding with a cost recovery settlement agreement. Ms. Shearer reported **RP July** numbers include costs associated with minimum site assessments at the Old Turquoise Bar, South Main Street Gas Card in Carlsbad, and Medical Center Physical Plant in Las Vegas. She added that the majority of the remaining allocations address Jim's Automotive/2 in Albuquerque, Lowell/Jennings in Alamogordo, and the Fina 1A site in Hobbs. She stated that significant monies were approved in **state lead** for remediation system equipment and operation and maintenance at the Cibola Chevron as well as installation costs for a remediation system at Mike's Auto Detail.

Ms. Shearer stated it was requested at the last meeting that the number of active sites with release identification numbers below 100 be provided. She referred to a spreadsheet included in the meeting packet and reported eleven (11) sites were not found in the database or in hard copy files. She added that of the

eighty-nine (89) remaining, forty-seven (47) were classified as no further actions; four (4) were eligible for no further action status, but require some minor work; and five (5) were referred to other agencies. These agencies are the Groundwater Quality Bureau (GWQB) and the Environmental Protection Agency (EPA). She explained sites referred to the GWQB commonly consist of releases from multiple sources where the majority of contamination falls within groundwater jurisdiction, and those referred to EPA are on tribal lands, therefore within their jurisdiction. Ms. Shearer added that thirty-one (31) sites were currently being monitored meaning they have been cleaned-up and considered low risk; and four (4) were aggressively being worked. These include:

- **Ryder Truck in Albuquerque** ~ 60,000 gallons of a 120,000 gallon release recovered; work continues. Diesel is not like gasoline that can be vaporized, it is a more complex process.
- **Truckstops of America in Las Cruces** ~ diesel product removal continues.
- **Arroyo Hondo in Santa Fe** ~ only viable cleanup is excavation and disposal; however, property is completely covered with business. A system was installed to cut off contamination to residential areas across I-25; however, the source of contamination has impacted the water supply to adjacent businesses. Will be expanding soil vapor extraction system in the source area to prevent further contamination.
- **Bar F2 in Bloomfield** ~ structures on property recently demolished; will be re-evaluated for possible dig and haul

Ms. Shearer also spoke about remediation efforts at the Corrales Chevron site. She indicated partial source removal had been completed and that the risk level would continue to be assessed. The concern deals with its location which is next to a river where the only remediation is to dig and haul; however, it is still an active site. Once the site closes, then one can proceed with a dig and haul.

Mr. Pynes inquired about the status of the City Wells site in Hobbs. Ms. Shearer responded the site was close to gaining a no further action designation. She added one more year of monitoring would be done and that the workplan for decommissioning the system was forthcoming.

Mr. Norton complimented staff for following-up on requests from the previous meeting. He suggested that a priority ranking list and the criteria determining how sites are prioritized, as well as, a brief status be presented at the next meeting. Ms. Shearer stated that about 800 sites were ranked, and that information was not available to rank the others pending minimum site assessments. Mr. Davis stated staff would provide the information at the next meeting.

## **Item # 6 PREVENTION AND INSPECTION UPDATES**

Mr. Calvin Martin, Prevention Inspection Program Manager, updated the Committee regarding the 2005 Energy Policy Act provisions; specifically that procedures were in place to adhere to the public reporting provision. He stated the Bureau was unable to inspect all facilities within the three-year inspection cycle; however, he commented that the number was low (twenty) considering the two inspector vacancies. He added that secondary containment provisions became effective in April 2008, and that programs have been implemented to comply with the provision. He briefly spoke about the new operator training requirements effective June 15, 2009. This training requires owners and/or their designated employees to undergo training to become certified operators. Deadlines to acquire certification have been staggered with the first being July 1, 2010, for owners who have thirteen or more existing facilities. He added that training would be provided by third party companies, or companies may wish to provide in-house training as long as their trainers adhere to requirements outlined in the rules and regulations. Mr. Martin stated the authority with

respect to the delivery prohibition provision was pending authorization by the legislature. He continued to speak about the number of notice of violations issued since January 15, 2009. Of the 550 issued through July, 150 had been corrected. In the past staff did not issue formal notices of violations, rather such was noted on the inspection report as a notice of deficiency then followed-up within a couple of months. He commented that many of the notices were due to the lack of required operation and maintenance plans or related to system equipment repairs. He provided the Committee with brochures outlining the new operator training requirements as well as requirements for underground storage tank systems installed, replaced, repaired or modified on or after April 4, 2008, and commented that staff would also be attending trade shows to disseminate the information.

Mr. Davis spoke about the need for consistency practices with respect to conducting inspections throughout the state. For example, if a facility in Farmington is issued a violation for a specific reason then the same should be done for a facility elsewhere that has the same circumstance. He stated inspectors were being cross-trained to become consistent in terms of documentation and the issuance of violations.

Mr. Martin referred to a map entitled “Registered Tank Sites in New Mexico with a 20 Mile or More Buffer” as provided in the agenda packet and commented there were ten registered tanks with a 20-mile buffer. Such has been generated in anticipation of the implementation of the delivery prohibition provision. He noted these sites would be allowed more time to correct deficiencies so as not to jeopardize fuel access and that the sites were defined as “Rural Remote” in the new rules and regulations. **(The map has been attached for the record.)**

Mr. Pynes reiterated the need to be consistent in terms of inspections and when issuing violations. This is an area which frustrates tank owners. He commented that one needs to treat the tank owners as customers. Mr. Davis concurred that the Bureau needed to be more consistent when conducting inspections.

Mr. Briggs questioned how the more detailed inspections would affect the three year inspection frequency cycle. Mr. Martin acknowledged that such might be affected; however, staff was in the process of inspecting sites in the Santa Fe area as part of consistency training with the hope that inspections would be expedited in a timelier basis.

Mr. Norton expressed concern about placing rural areas at risk with respect to not being able to obtain gasoline. Mr. Davis explained that staff used one gallon as a “rule of thumb” to determine the 20-mile radius with the hope that a vehicle would be able to reach the next gasoline facility before running out of fuel. He noted that staff would be re-evaluating one of the ten sites on the map to determine whether or not it should truly be included. Mr. Davis stated the number of isolated facilities was not as great as initially anticipated.

Mr. Norton requested that staff draft criteria and explain its application about what constitutes a “rural and remote” facility. He would also like language indicating that such facilities would be allowed additional time to correct deficiencies. He stated he wanted to be prepared for questions at upcoming legislative hearings.

Mr. Davis explained the 2005 Energy Policy Act requires states to implement a delivery prohibition program; however, the law recognizes the rural nature of the west and provides for an up to 180-day exemption. He added that the law did not define rural and remote, thus staff had to make this determination. He stated that the EPA has expressed concern about the approach; however, staff wanted to be proactive and define “rural and remote” in the rules and regulations even though, as a state, it has not been given authority by the legislature to proceed with delivery prohibition. He added that some states have remained silent on the subject choosing to address each facility on a case-by-case basis; however, he felt this was not a good approach.

Mr. Pynes asked if the map was considered a baseline regarding the number of facilities deemed rural and remote since the 2011 regulations may cause some to be removed. Mr. Davis responded the map was dynamic in nature where adjustments would be made as needed. As facilities close, changes will be necessary to address the rural and remote designation. It was noted that as the industry consolidates, there would be additional rural factors to consider. Mr. Martin added temporary closings would also be taken into consideration. Mr. Norton commended staff for making a good faith effort to address the situation.

#### **Item # 7 REGULATION PROCESS UPDATE**

Mr. Davis reported the new rules which went into effect on June 15 were available on the PSTB and NMAC web pages; that stakeholder meetings would be held in the fall to discuss the changes; and that a solicitation letter and application/review matrix with respect to operating training was sent out on May 14; however, no applications for approval of operator training had been received. He added, however, that fifteen companies had expressed interest where many were expected to submit applications in the near future. Mr. Davis continued to report about invoicing and tank fee collection program activities. He stated the second round of invoices would be mailed in September to owners delinquent only for the current fiscal year. He added that 283 cases had been completed as of August 15, 2009, where most had resulted in closing of tanks, files and owner accounts; that \$210,914 had been collected, and that \$1,249,172 had been declared uncollectible, which equates to a ratio of 14% collectible to 86% uncollectible.

With respect to Installers Certification, Mr. Davis stated the new rules would only require the ICC certification for first-time installers noting that revised application forms for initial certification and renewal were on the web-page. He pointed out that the New Mexico Laws and Rules test was now required for initial certification and renewal. He reported that staff had sent notice to all installers with expiring certifications beginning with a reminder in August, which was one month before expiration. He noted that individual letters laying out the requirements for each installer were mailed in July and August. Mr. Davis reported (as of August 18) that of those installers whose certifications would be expiring on September 16, only fifteen (15) had completed the renewal process; eight (8) had completed applications and were only in need of the NM laws & Rules test; twenty-one (21) had not submitted any application; seven (7) applications were incomplete; and there were three (3) in which current contact information was not available. He stated that two of the biggest companies have a number of their personnel already certified.

Mr. Martin noted that there were separate certification programs for underground and above ground installations and that many installers would be certified for both.

#### **Item # 8 LEGISLATIVE UPDATE**

For the record, the Bureau was not successful during the 2009 Legislative session with respect to SB16, which would amend the Ground Water Protection Act and the Hazardous Waste Act to provide authority for delivery prohibition.

Mr. Davis reported staff had met with the Interim Committee on Radioactive and Hazardous Materials in June at their agenda setting meeting where it was acknowledged that PSTB staff would be heard in November.

#### **Item # 9 NEXT MEETING**

The next meeting will be held on October 22, 2009, at 10:00 a.m.

**Item #10 ADJOURNMENT**

Mr. Briggs moved to adjourn the meeting. Mr. Pynes seconded. The motion passed unanimously.

The meeting adjourned at approximately 11:30 a.m.

PETROLEUM STORAGE TANK COMMITTEE

---

Mr. Jim Norton, Chairman

Minutes prepared by: Elaine Trujillo