

**STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
STORAGE TANK COMMITTEE**

**State Personnel Building
Leo Griego Auditorium
2600 Cerrillos Road
Santa Fe, NM 87505**

DRAFT

Minutes of the March 27, 2008 Meeting

The meeting of the Storage Tank Committee ("Committee") 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 Thursday, March 27, 2008. Chair Jim Norton called the meeting to order at 10:06 a.m.

Members Present:

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

Other Persons Present:

Jim Davis, NMED/PSTB
Jeff Mills, NMED/PSTB
Kalvin Martin, NMED/PSTB
Joyce Shearer, NMED/PSTB
Gregoria Archuleta, NMED/EPD
Cathy Atencio, NMED/EPD
Natalie Benavidez, NMED/PSTB
Clancy Roberts, NMED
Lorena Goerger, NMED/PSTB
Jennifer Pruett, NMED/PSTB
Joe Godwin, NMED/PSTB
Tim Matson, NMED/PSTB
Stephen Reuter, NMED/PSTB

Jim Griswold, Billings & Associates
Tim Littlewood, Western Refining
Dino Wrantr, Western Technologies
Michael Hannigan, Basin Engineering, Inc.
Scott McKittrick, Souder, Miller &
Associates
John Casey, Basin Engineering
Andy Freeman, Hall Environmental

Item #1 Roll Call

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

Item #2 Approval of the Agenda

The Chair asked for an approval of the agenda, no changes were requested so a motion was called.

Action:

**Mr. Baca moved to approve the Agenda
Mr. Briggs seconded. Motion passed unanimously.**

Item #3 Update on Corrective Action Fund

Jim Davis presented an update on the Corrective Action Fund to the Committee

Mr. Davis started with an update for the month of December. There was no operating transfer from Taxation and Revenue for the month of December so the Loading Fee section is blank. Handouts were provided for the audience and Committee Members to follow along.

December

Beginning Cash - \$ 14,811,299	
Loading Fee - \$ 0	Reserve - \$ 1,000,000
Payment - \$ (673,910)	Work plan liabilities - \$ 10,284,001
Operating Transfer - \$ 768,400	Un-obligated - \$ 2,086,889
Ending Cash - \$ 13,368.989	

Mr. Davis stated that the summary statistics are also shown below in various categories, State Lead, Responsible Party, and Year to Date.

January

Beginning Cash - \$ 13,368,989	
Loading fee - \$ 3,470,832	Reserve - \$ 1,000,000
Payment - \$ (1,395,884)	Work plan liabilities - \$ 9,691,196
Operating Transfer - \$ (768,400)	Un-obligated - \$ 3,986,642
Ending Cash - \$ 14,675,538	

February

Beginning Cash - \$ 14,675,538	
Loading fee - \$ 1,731,797	Reserve - \$ 1,000,000
Payment - \$ (928,405)	Work plan liabilities - \$ 10,722,967
Operating Transfer - \$ (768,400)	Un-obligated - \$ 3,356,840
Ending Cash - \$ 15,076,005	

Mr. Davis stated that the Bureau continues to have difficulty receiving information from the Department of Taxation and Revenue on their monthly transfers. They get the information late. “Obviously the Committee is aware there are some months during the year where no Operating Transfers are reported. Then we get two months in a single transfer.”

Mr. Davis stated it would help to have this information sent in a timely manner and asked for the Committee’s support by drafting a letter for the Committee to sign to send to the Department of Taxation and Revenue. “In sending this letter perhaps that would help them understand our need for this information.”

The Chair asked if this is just a timely reporting issue

The manager of the Reimbursement Section responded that they have not received any reports since Donna Gary left the Department, and that they used to receive them on a monthly basis. It would tell them how much of the PPL was collected for that month how much was distributed.

The Chair asked if they have exhausted every method to get TRD to comply.

Mr. Davis stated they had been in contact up to the level of the Deputy Secretary. At that point they did get a response from the Bureau Chief but it was an inadequate response, “We can’t promise you when you will get it.”

The Chair wanted to know the thoughts of the Committee on this issue.

Mr. Baca wanted to stress to TRD that it was very important to get timely reports and had no problem signing a letter.

Mr. Pynes wanted to know what had changed after Donna Gary left that made these reports late.

The Reimbursement Section Manager replied according to the TRD Bureau Chief and some of the people on staff at TRD that they have changed the software that they are using.

Mr. Pynes also stated likewise with Mr. Baca he has no problem signing a letter.

A motion was called by the Chair for the request of signing a letter to Taxation and Revenue to start reporting on a timely manner regarding the Monthly Transfers of the PPL Fee.

**Approval of Letter: Motion: Mr. Briggs
Second: Mr. Pynes**

Motion to draft letter passed unanimously.

The Chair then asked Clancy Roberts NMED CFO to talk about Operating Transfers and the fact that when this is added up, it is above the 30% maximum called for on House Bill 19. The Chair made note that this can not be over 30%, so it will be reduced in the last three months of the fiscal year in order to get down to the statutory level.

Mr. Roberts gave a brief description of how he plans to bring the 31% down to the maximum 30%. He stated that the Department will reduce the cash draw every month from this month going forward through June 30th by an amount that will make the Fund whole come the end of the fiscal year. So the \$768,400 number that you see on the CAF fund update spreadsheet will be reduced by a third because there are three draws left in the fiscal year. So come June the cash draw will be whole again where the Department is only expending 30% and no more as authorized by House Bill 19. Mr. Robert's stated at the next meeting he will show the Committee the steps taken to fix this issue.

The Chair asked if there were any questions from the Committee.

Mr. Pynes asked if this operated the same as Taxation and Revenue that you apply penalty and interest to this money.

Mr. Roberts replied that they have to make the Fund whole in all aspects, so the answer is no.

Mr. Chavarria asked if there were other affected parties.

Mr. Roberts replied that they have identified them and are taking care of the issue.

The Chair responded to Mr. Chavarria's question, saying that last year they were down 15% to 16% so there was no problem. The Chair also asked if there were any other questions on these three months or the current month of February.

The Chair had a few questions regarding the February spreadsheet. First, on the second page of the spreadsheet was the Bureau seeing a drop off in the amount of money coming into the PPL fund due to the rising cost of gas prices, now well over three dollars a gallon or are we expecting to be around the nineteen million at the end of the year like we've seen the past couple of years. The Chair wanted to know how it was looking for the rest of the year.

Mr. Davis responded that so far there has not been a decrease. However, he had a conversation with Mr. Baca about what gas prices might start doing to us.

Mr. Baca responded that as gas prices continue to rise we might see a drop-off but we'll have to watch the next few months carefully.

Mr. Davis also said when he and Mr. Baca were talking, if the country goes into a recession then economic activity across the board is going to be reduced., and economic activity is largely driven by petroleum products so he thinks our fate is more or less in the hands of the over-all economy. He stated that it was something that the Bureau would keep an eye on.

The Chair wanted to talk about the past few months of the PPL fund at the next meeting and the economy.

The Chair's second question was again using the month of February, looking at the year-to-date 08 numbers. He wanted to make sure the Bureau is doing a healthy amount of cleanups.

Compared to 07 they are \$2.5 million over last year. In 06 they were at \$12 million so that was a little higher, but this goes up and down based on the big cleanups performed. The Chair asked Mr. Davis if these patterns are continuing around historic levels.

Mr. Davis replied that they were doing things at approximately the same rate, one of the reasons the dollars amount is higher this year than in FY07 is because of the amount obligated for the Penasco Project in FY07 that didn't actually pay out until FY08. That was in October and November 2007. So that is one of the reasons the number is a little bit larger. Mr. Davis reminded the Committee of the claims paid in FY06 included the large Graves Site excavation in Farmington. He also stated that when the Bureau does large dollar projects there will be some differences between years but that cleanups are moving at approximately the same rate as historically.

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

Item # 4 Update on Remedial Action Sites

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

Work plan approvals for December 2007;

34 RP Workplan approvals:	\$ 515,013.50	4 SL	Workplan, approvals:	\$ 69,468.12
3 RP Addendums:	<u>\$ 17.31</u>	1 SL	Addendums:	<u>\$ 4.47</u>
Totaling:	\$ 515,030.81		Totaling:	\$ 69,472.59

Monthly grand total of \$584,503.40

Work plan approvals for January 2008;

25 RP Workplan approvals:	\$646,234.08	6 SL	Workplan approvals:	\$178,474.24
3 RP Addendums:	<u>\$ 19.54</u>	1 SL	Addendums:	<u>\$ 4.47</u>
Totaling:	\$646,253.62		Totaling:	\$178,478.71

Monthly grand total of \$824,732.33

Work plan approvals for February 2008;

32 RP Workplan approvals:	\$1,629,801.14	2 SL	Workplan approvals:	\$8,653.67
3 RP Addendums:	<u>\$ 31.23</u>	0 SL	Addendums:	<u>\$ 0</u>
Totaling:	\$1,629,832.37		Totaling:	\$8,653.67

Monthly grand total of \$1,638,486.04

Ms. Shearer explained that all the work that they are doing at this point in time covers three areas. MSA Minimum Site Assessments or preliminary investigations for facilities that have not had that initial investigation performed are a high priority because that information is used to rank release sites. After that we are working on highest priority sites, or the sites that present the highest risk. We also are trying to maintain operations of any remediation systems that were installed in the past and are still effectively remediating the environment.

The Chair asked Ms. Shearer to elaborate more on the Grants Triple Site.

Ms. Shearer stated that they keep drilling to find the edges of the plume at the Cibola Site. “We have not found it yet, the well that we drilled last week has a foot and a half of product in it.” She said it was possible that they have a previously unknown source, and the plume seems to be long and narrow, as though it is following a lava flow or an old channel that has been buried. She stated that there was a city supply well that was about 300 feet side-gradient that was shut down several years ago and they are still trying to determine why. She stated that at the current time there is a sentinel well between the plume and that city supply well and it’s clean. If there was ever any petroleum going in that direction it’s not there now. Ms. Shearer stated, “We are staying on top of it and working together with the current owner, to keep his business open while we install this cleanup system.” She also stated that Cibola was the largest problem of the three sites. The problem at the former Maverick station has a more insidious nature in that vapors are leaking into the building. Monitoring wells have been installed and sampled at the former Gil’s Shell facility where an excavation and disposal project was completed last summer. Of a total of six wells, only one has low level BTEX contamination in it. She stated they did a good job excavating that site.

The Chair asked Joyce if it was clear that the contamination came from underground gas tanks.

Ms. Shearer responded yes.

The Chair asked if this was an older release or a more current one with the more upgraded tanks.

Ms. Shearer responded the most recent release is from a newer system.

The Chair asked for a thorough briefing at the next meeting.

Included in the handouts was list of Rank and Priority Sites which is also attached at the end of the minutes.

At the last meeting the Committee asked for a presentation on Rank and Priority Sites, so Jeff Mills who is currently the expert did the presentation.

Item # 5 Presentation of the Remedial Action Ranking System

Mr. Mills presented a PowerPoint presentation on site ranking that explained the risk assessment and process that is used to rank sites.

All this information was followed by a paper handout that went into detail about each of the categories listed above and is also attached to the end of these minutes for further review.

The Committee continued the discussion with regards to the guidelines that EPA puts out and the Bureau follows. Ms. Shearer explained that they are very conservative when calling a site a clean up site. Mr. Mills gave an example of a site where aggressive clean up completed a means that a remediation system was operated and some residual contamination remained, but additional aggressive remediation is not warranted. The Committee asked if there was a process the Bureau goes through that reduces the rank of a site after completion of remediation. Ms. Shearer responded that this occurs, and the project manager is the best source for site specific information. The Committee also discussed that it would be nice to know how a site is ranked out.

The Committee went over the handout on Site Priority. Ms. Shearer stated that they are trying to come up with a way to make it easier to reuse the site. Ms. Shearer stated that EPA has come up with an idea where we can issue a document that said that they did all the cleanup of the site that we can do, these are the remaining issues that have minimal environmental liability and is Ready for Reuse. Ms. Shearer stated that they are starting this on a pilot project.

Item # 6 Presentation on Ready for Reuse-A Pilot Project.

Mr. Reuter presented a PowerPoint presentation on Ready for Reuse, using Atex/T-Gas 54 (Thriftway 296) as an example. (Follow along handouts are provided at the back of the minutes.) Mr. Reuter gave a general overview with regards to the last sampling. He also explained how Ready for Reuse is defined by EPA. He went into detail on the site's history and how Ready for Reuse can benefit the site. He also explained if a site is appropriate for Ready for Reuse. He also explained the process a site will go through in order to receive a Certificate and Determination Letter.

The Chair asked if there were any questions on the presentation.

Mr. Pynes wanted to know if the state lending agencies were aware of this.

Mr. Reuter replied that if New Mexico follows the lead of EPA Region 6 bankers and developers have become very comfortable with the term Ready for Reuse and the documentation that spell things out very clearly. So having that joint documentation from the EPA and the state should make the developers and bankers more comfortable.

Mr. Baca wanted to state that he was very pleased with this sort of documentation going on. He stated that there are some very valuable pieces of property out there that this exact documentation will become very helpful for land owners.

The Chair asked if other regions were doing this at all.

Mr. Reuter responded that once Region 6 has solidly established the Ready for Reuse program they will take it national.

Mr. Briggs had a question about the sites that would qualify for this; he wanted to know if they had a general time frame to get their certificates out to these sites.

Mr. Reuter responded the first one always takes the longest because of all the approvals and after it will be on a case by case basis. He stated that they do their work on a priority basis, and by nature these sites in question are low priority sites and they will work on them as property transactions are coming in. "First we'll let the market drive us; then we'll get them all covered out."

Item # 7 Prevention and Inspection

Mr. Calvin Martin, Prevention Inspection Program Manager, provided an update on Prevention and Inspection program. He started off by introducing three recently hired inspectors. Elmer Smith was hired about two years ago and he works in the Carlsbad office. Tim Matson is in the Las Cruces office and was hired last April. Bart Butler is in the Albuquerque office and was hired last June. Mr. Martin stated he had hired the Santa Fe inspector position in January, Mr. Ron Trueblood who could not make it to the Committee meeting today. .

Mr. Martin talked briefly about how they are prioritizing inspections. He stated that the program is inspecting 70% of their facilities on an annual basis. That's about thirteen hundred facilities with the resources they have available right now. The program is now trying to do inspections with two different priorities. First, meet EPA requirements to inspect facilities every three years so on a quarterly basis, a report will be generated that states which facilities have not been inspected in the previous three years. . The second issue which began last November is to annually inspect active facilities that are LUST cases. . The parties responsible for the clean up have been identified as the tank owner.

Mr. Martin stated that they did contact a company in November that was previously in compliance a number of years ago. A recent inspection determined that they are now of compliance and the Bureau is working with the company to correct the compliance issues.

Mr. Pynes wanted to know how many total inspectors the Bureau has at this time.

Mr. Martin responded that they currently have thirteen inspectors not including him.

Mr. Baca had a comment regarding deadlines that they were coming up to regarding regulations.

Mr. Martin wanted to comment about that but would like to hold off on going more in depth because Ms. Pruett will be speaking on that. He just wanted to add that there are changes to the above ground tank rules and that there are more changes to the underground storage tank rules to meet the provisions of the Energy Policy Act. He stated that they are starting to develop brochures and handouts for tank owners.

Item # 8 Update on Regulation Process

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

Ms. Pruett spoke about the secondary containment rule revision (handouts are provided and are at the back of these minutes). She stated that yesterday the final order was signed by the Environmental Improvement Board adopting those new rule revisions, and then were filed at Records and Archives. She stated that they will be effective next Friday April 4th. She also stated that they are up on the website and the Bureau is working on handouts and outreach for the regulated community so they are aware of the changes.

Ms. Pruett stated the major changes to the rules are all new UST and AST systems must undergo initial testing before receiving product, they would require a secondary containment on all new UST systems and all replaced USTs including dispensers and piping, unless the owner can demonstrate to them that no part of the system is within a thousand feet of a community water system, potable water system or source water.

Ms. Pruett continued that she received several calls this week about the new AST secondary containment requirement; she stated there was no new AST requirements; it is one they adopted in 2003 and it takes effect in 2011 for current AST systems. She thinks people are mixing this up, and there seems to be some confusion. The Bureau is trying to address this with the outreach materials.

Ms. Pruett continued with the regulation revision stating that revisions prohibit the installation of USTs for use as ASTs, require containment sumps at all points where piping transitions above to below ground (a place that is particularly vulnerable to releases). The revisions require a report to the Department on the installation of coating or internal lining of concrete or a geo-synthetic membrane as a secondary containment for AST's. She stated they added loading racks as a part regulated facilities. Revisions also require a written operation and maintenance plan for each facility. She said it was kind of a sneak preview into operator training. She stated this is an important part of operator training: to make sure that every employee at a facility knows emergency responses. The revisions further require on- site inspections of exposed pipe and Bureau oversight for whether repair, replacement or modification, and to have an appropriate response to what is found. She stated the revisions require interstitial monitoring for release detection for newer replaced double-walled AST systems, and they will require reports on all tank, line and leak detection tests to insure appropriate tests are being performed by qualified personnel. She stated they require turbines to shut off automatically if sensors detect the presence of regulated substances such as water. She also stated the revisions include that inspectors be notified when any work is done on AST piping. They will require a demonstration of the integrity of all parts of a tank system before returning any part of the tank system to service. After temporary or permanent closure the Bureau wants to be sure there haven't been any changes or problems that could occur from releases. She stated that the revisions will also allow the inspectors to determine the types of samples, sample locations and measurements required for a closure or change of service.

Ms. Pruett continued that the last major change to the revisions was to require on-site examination for UST and AST systems to cover all equipment and technology used in an entire tank system. She stated that this was what was going on with the old rules.

Ms. Pruett stated that they now have a whole set of new rules that they will be working on. She stated due to the fact that they were unable to get legislative changes during the legislature they will turn their energy to operator training. She stated they are working on that now and looking at what other states are doing. They also expect to include in their mail-out in May an invitation to a stakeholders meeting to discuss various operator training methods appropriate for New Mexico, and also to ask for an EIB meeting in the winter.

Ms. Pruett went on to talk about the delinquent fee program and that they are over a million dollars resolved. They have touched over a million dollars by collecting 13% of that and declaring about 87% uncollectable. This was because a lot of these fees were never really owed in the first place, either by error or companies or people that are now long gone. She stated that they have closed 190 cases.

Ms. Pruett went on to talk about her accounts receivable project; for FY08 they have now collected 88% of those outstanding accounts receivable. She stated that they only have 3% outstanding, some of those they do expect to come in the next several months. She stated that they have found an 8% error rate which was mostly unreported transfers and non-existent tanks.

Ms. Pruett went on to speak about Fund 989 and stated that they have reconciled all the fees collected through January, and the total fees collected for this fiscal year are \$211,389.00. But she wanted to remind the Committee that this does not include the major amount that comes in June. They bill in May but bills don't come due until July 1st.

Item # 9 Approval of the January 3, 2008 Meeting Minutes

**Action Mr. Baca moved to approve the minutes of January as amended
 Mr. Chavarria seconded
 Motion passed unanimously.**

The Chair wanted to recognize Trina Page for doing the minutes, they were very detailed and long, which if anyone needed to go back and look something up they could.

Item # 10 Other Business

Mr. Baca wanted to be brought up- to- date regarding the PPL Fee.

Mr. Davis responded by saying that the Bureau had met with the Department of Taxation and Revenue on a couple of occasions, most recently a week ago yesterday to talk about the Loading Fee, to try and understand it is collected.. He stated according to this discussion TRD is currently looking into their statutes, because TRD recognizes that the current statutory language is confusing and makes it difficult for a taxpayer to understand who they might be subject to. An

example of this is in the Northwestern part of the state, the checkerboard area adjacent to the Eastern Agency of the Navajo Nation. Navajo Nation EPA has what they call a tariff and they do collect and this is the equivalent of the PPL Fee. This generates a fund that the Navajo Nation uses to clean up contaminated sites and to do other things. Mr. Davis stated that there are facilities that are paying both fees.

Mr. Chavarria asked if they are looking at tribally- owned facilities.

Mr. Davis responded that they have been talking with Navajo Nation EPA and Region 9 EPA out of San Francisco on jurisdictional issues for inspections, whose regulations apply and for remediation who then would pay for environmental remediation in the checkerboard area.

Mr. Chavarria stated that he would like to be included in meetings pertaining to the Santa Clara Pueblo area.

Mr. Baca just wanted to make sure that a letter is drafted to Taxation and Revenue regarding the importance of the PPL Fee.

Item #11 Next Meeting is to be determined.

After discussion, the Committee decided the next meeting of the Storage Tank Committee will be held in Santa Fe, New Mexico, with Trina Page and Janet Valdez narrowing down a date.

Item #12 Adjournment

The meeting adjourned at approximately 12:12 pm.

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

Petroleum Storage Tank Committee Chairman