

STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
STORAGE TANK COMMITTEE MEETING
Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Rd., Santa Fe, NM

May 2, 2018 Minutes

The meeting of the Storage Tank Committee was called to order by Ms. Dana Bahar, Acting Chair, at 10:00 a.m.

Members Present:

Dana Bahar, NMED/PSTB, Acting Chair
Brent Neil, STC Member
Ryan Briggs, STC Member
Benjamin Hodges, STC Member
Jeff Scarbrough, STC Member
Stephen McLin, STC Member

Others Present:

Mike McVey, Daniel B. Stephens and Associates
Ruben Baca, NM Petroleum Marketers Association
Jacob Meadows, LANS, LLC
Reggie Roberson, Eaton Sales & Service
Doug Vetter, Sandia National Laboratories
Barbara Fix, member of the public
Eileen Marcillo, INTERA consulting
Christine Cherrett, USEPA
Micaela Fierro, NMED/PSTB
Adrian Jaramillo, NMED/PSTB
Antonette Cordova, NMED/PSTB
Joe Godwin, NMED/PSTB
Martha Juarez, NMED/PSTB
Bonney Hughes, NMED/PSTB
Lorena Goerger, NMED/PSTB

Member Absent: None

NMED = New Mexico Environment Department; PSTB or “bureau” = Petroleum Storage Tank Bureau;
USEPA = US Environmental Protection Agency; CAF = corrective action fund

Item #1 ROLL CALL

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

Item #2 APPROVAL OF THE AGENDA

Mr. Stephen McLin moved to approve the agenda, and Mr. Benjamin Hodges seconded the motion. Approval of the agenda was passed unanimously.

Item #3 APPROVAL OF THE MINUTES

The Acting Chair, Ms. Dana Bahar, called for a motion to approve the December 13, 2017 meeting minutes. Mr. McLin moved to approve the minutes, and Mr. Jeff Scarbrough seconded the motion. Approval of the minutes was passed unanimously.

Item #4 REMEDIAL ACTION PROGRAM UPDATE

Ms. Lorena Goerger, manager of PSTB’s Remedial Action Program, reported on corrective action workplans for the months of **October 2017 through February 2018** as summarized below.

October 2017:

| <u>Responsible Party</u> | | <u>State Lead</u> | |
|---|----------------------|-------------------|----------------------|
| 31 | \$ 882,162.23 | 3 | \$ 529,855.13 |
| <u>Addendums</u> | | <u>Addendums</u> | |
| 2 | \$ 50.41 | 7 | \$ 65.18 |
| Total | \$ 882,212.64 | Total | \$ 529,920.31 |
| GRAND TOTAL \$ 1,412,132.95 | | | |

November 2017:

| <u>Responsible Party</u> | | <u>State Lead</u> | |
|---|----------------------|-------------------|----------------------|
| 35 | \$ 645,552.69 | 24 | \$ 260,836.26 |
| <u>Addendums</u> | | <u>Addendums</u> | |
| 6 | \$ 204.98 | 0 | \$ 0.00 |
| Total | \$ 645,757.67 | Total | \$ 260,836.26 |
| GRAND TOTAL \$ 906,593.93 | | | |

December 2017:

| <u>Responsible Party</u> | | <u>State Lead</u> | |
|---|------------------------|-------------------|----------------------|
| 77 | \$ 1,031,331.61 | 9 | \$ 142,319.64 |
| <u>Addendums</u> | | <u>Addendums</u> | |
| 3 | \$ 170.60 | 0 | \$ 0.00 |
| Total | \$ 1,031,502.21 | Total | \$ 142,319.64 |
| GRAND TOTAL \$ 1,173,821.85 | | | |

January 2018:

| <u>Responsible Party</u> | | <u>State Lead</u> | |
|---|----------------------|-------------------|----------------------|
| 5 | \$ 841,702.08 | 15 | \$ 470,416.41 |
| <u>Addendums</u> | | <u>Addendums</u> | |
| 4 | \$ 70.18 | 7 | \$ 268.81 |
| Total | \$ 841,772.26 | Total | \$ 470,685.22 |
| GRAND TOTAL \$ 1,312,457.48 | | | |

February 2018:

| <u>Responsible Party</u> | | <u>State Lead</u> | |
|---|----------------------|-------------------|---------------------|
| 46 | \$ 956,865.39 | 7 | \$ 67,502.44 |
| <u>Addendums</u> | | <u>Addendums</u> | |
| 7 | \$ 209.73 | 1 | \$ 12.27 |
| Total | \$ 957,075.12 | Total | \$ 67,514.71 |
| GRAND TOTAL \$ 1,024,589.83 | | | |

(The monthly reports are available at www.env.nm.gov/ust/ustcom.html, under Attachments.)

Item #5 CORRECTIVE ACTION FUND UPDATE

Ms. Goerger also presented the CAF updates for the months of **October 2017 through February 2018.**

October 2017:

| | | | |
|---------------------|-----------------|-----------------------|------------------|
| Beginning Cash | \$ 9,385,601.30 | Reserve | \$ 1,000,000.00 |
| Loading Fee | \$ 1,772,526.50 | Work plan liabilities | \$ 6,062,605.92 |
| Payments | \$ (369,750.06) | Unobligated balance | \$ 2,961,130.82 |
| Operating Transfers | \$ (764,641.00) | Ending Cash | \$ 10,023,736.74 |

November 2017:

| | | | |
|---------------------|------------------|-----------------------|------------------|
| Beginning Cash | \$ 10,023,736.74 | Reserve | \$ 1,000,000.00 |
| Loading Fee | \$ 1,695,266.28 | Work plan liabilities | \$ 6,602,137.38 |
| Payments | \$ (355,898.65) | Unobligated balance | \$ 2,996,325.99 |
| Operating Transfers | \$ (764,641.00) | Ending Cash | \$ 10,598,463.37 |

December 2017:

| | | | |
|----------------------|-------------------|-----------------------|------------------|
| Beginning Cash | \$ 10,598,463.37 | Reserve | \$ 1,000,000.00 |
| Loading Fee | \$ 1,762,768.44 | Work plan liabilities | \$ 7,427,787.63 |
| Due to/due from | \$ 1,605,893.51 | | |
| Payments | \$ (316,562.10) | Unobligated balance | \$ 3,693,493.59 |
| Operating Transfers* | \$ (1,529,282.00) | Ending Cash | \$ 12,121,281.22 |

Ms. Goerger noted that the “due to/due from” amount for December 2017 was from the return of unexpended funds from the operating budget of the previous fiscal year. Ms. Goerger also elaborated that the operating transfers for the months of both December 2017 and January 2018 were taken in December to assist with NMED cash flow.

January 2018:

| | | | |
|----------------------|-------------------|-----------------------|------------------|
| Beginning Cash | \$ 12,121,281.22 | Reserve | \$ 1,000,000.00 |
| Loading Fee (April) | \$ 1,746,173.44 | Work plan liabilities | \$ 8,187,723.61 |
| Payments | \$ (540,698.87) | Unobligated balance | \$ 2,609,750.18 |
| Operating Transfers* | \$ (1,529,282.00) | Ending Cash | \$ 11,797,473.79 |

Ms. Goerger noted that operating transfers for February and March 2018 were taken out in January 2018.

February 2018:

| | | | |
|---------------------------------|------------------|-----------------------|------------------|
| Beginning Cash | \$ 11,797,473.79 | Reserve | \$ 1,000,000.00 |
| Loading Fee | \$ 1,732,191.86 | Work plan liabilities | \$ 8,790,867.70 |
| Payments | \$ (409,038.69) | Unobligated balance | \$ 3,329,759.26 |
| Operating Transfers (none 2/18) | \$ () | Ending Cash | \$ 13,120,626.96 |

(The monthly reports are available at www.env.nm.gov/ust/ustcom.html.)

Mr. McLin asked if there will be any operating transfers for March. Ms. Bahar replied that the operating transfer for March 2018 was taken in January 2018 and the operating transfer for April has been completed. The bureau expects the final operating transfer will be taken in May 2018 and none will occur in June 2018. Mr. McLin asked how someone would know from looking at a report on the website whether there was a double transfer that month. Ms. Bahar pointed to the second page of the CAF reports and assured the committee that the bureau monitors the transfers to ensure that only the equivalent of 12 draws are made in any fiscal year, totaling no more than the budget for the fiscal year. For FY18 the amount allocated is \$9,175,700.00 as detailed.

Mr. Ryan Briggs asked about the \$1.6 million due to/due from amount from the December 2017 CAF report. Ms. Bahar explained that it was unexpended funds from the operating budget from the previous fiscal year and reflects vacancy and and other budget savings.

Item #6 PREVENTION AND INSPECTION PROGRAM UPDATE

Mr. Joe Godwin, the manager of the Prevention and Inspection Program, presented the program summary to the Committee as follows.

Staff Updates:

Mr. Keith Chavez has accepted an Environmental Specialist-Advanced position in the Albuquerque office and will support compliance assistance efforts in addition to his role as an inspector. Mr. Elmer Smith has accepted the supervisor position for the southern part of the state and is now located in the Las Cruces office.

Facility/Tank Statistics:

| | | | |
|----------------------------------|--------------|--------------------|--------------|
| UST Facilities | 1,155 | USTs | 3,136 |
| AST Facilities | 567 | ASTs | 1,263 |
| Facilities with both ASTs & USTs | 26 | | |
| Total Facilities | 1,748 | Total Tanks | 4,399 |

Inspection and Compliance Statistics December 1, 2017 – April 30, 2018:

| | Number of Facilities |
|--------------------------------|----------------------|
| UST Inspections | 171 |
| AST Inspections | 57 |
| Facilities with both UST & AST | 5 |
| Total Inspections | 233 |

Installation and Closure Statistics December 1, 2017 – April 30, 2018

| | | | |
|------------------------------|----------|---------------------------|-----------|
| Installed USTs | 3 | Closed USTs | 17 |
| Installed ASTs | 5 | Closed ASTs | 8 |
| Total tanks installed | 8 | Total tanks closed | 25 |

Delivery Prohibition Statistics from December 1, 2017 – April 30, 2018:

| | Delivery prohibition cases submitted | Cases fully corrected of those submitted |
|--------------|--------------------------------------|--|
| UST cases | 58 | 17 |
| AST cases | 15 | 6 |
| Total | 73 | 23 |

Federal EPA LUST reporting:

| | |
|---|-----|
| Percentage of UST Facilities in Significant Operational Compliance with UST Release Prevention (spill, overfill, and corrosion protection) Requirements. This is the percentage of facilities that were in compliance with SOC release prevention requirements after being inspected within the 12-month period (4/1/2017 to 3/31/2018) | 86% |
| Percentage of UST Facilities in Significant Operational Compliance with UST Release Detection Requirements. This is the percentage of facilities that were in compliance with SOC release prevention requirements after being inspected within the 12 month period (4/1/2017 to 3/31/2018) | 89% |
| Percentage of UST Facilities in Significant Operational Compliance with UST Release Detection and Release Prevention (spill, overfill, and corrosion) Requirements. This is the percentage of facilities that were in compliance with SOC release prevention and release detection requirements (both during the same inspection) after being inspected within the 12 month period (4/1/2017 to 3/31/2018) | 78% |

Common Violations:

| Common Violations for UST Facilities | Common Violations for AST Facilities |
|---|---|
| Broken spill buckets | Failure to do interstitial monitoring |
| Failure to do line tightness testing | Lack of secondary containment |
| Failure to do line leak detector testing | Lack of overfill prevention and corrosion protection on TOS tanks |

Mr. Hodges asked if a replacement for Elmer Smith, the former inspector in Roswell, has been found. Mr. Godwin replied that the process of filling that position was underway and added that another inspector would be starting work in Santa Fe on May 21, 2018. Mr. Neil asked who was covering Roswell, and Mr. Godwin replied that Mr. Smith, Mr. Marcelo Paulik, and inspectors from Albuquerque and Santa Fe offices would be covering the area. Mr. Ruben Baca asked how many inspector vacancies there are. Mr. Godwin replied that there are five. Discussion followed about efforts and challenges to filling positions, especially in areas outside of Albuquerque. Mr. Hodges requested a list of names of inspectors for each area for the next Storage Tank Committee meeting. Mr. Godwin acknowledged the request, and Ms. Bahar stated that the Bureau strives to updates contact information on the webpage and will be posting a new inspection area map shortly.

Item #7 TANK FEE AND CERTIFICATION PROGRAM UPDATE

Ms. Antonette Cordova, Staff Manager for the Tank Fees and Certification Program, provided the following summary.

FY18 Invoicing:

Annual invoicing will be mailed out on June 1, 2018, to approximately 1000 owners. Tank Fees are due July 1, 2018.

Tank Installer Certification:

34 Active UST Certified Installers
19 Active AST Certified Installers
2 Pending AST applications

March 16, 2018, was the deadline to renew certifications expiring in 2018:

2 UST Certifications renewed
1 AST Certification renewed

3 UST Certifications expired
1 AST Certification expired

A/B Operator Training:

Summary Statistics (Both tank types)

| | |
|--|-------|
| Total Facilities | 1749 |
| Facilities with A and B Operator | 869 |
| Facilities without A and B Operator | 880 |
| % of Facilities Compliant | 49.7% |
| % of Facilities Non-Compliant | 50.3% |

From our last meeting in December 2017, we have seen a 2.7% increase in compliant facilities.

Item #8 OTHER BUSINESS

Ms. Bahar gave an update on proposed regulations and legislation as follows.

- The Environmental Improvement Board postponed deliberation on 20.5 NMAC until their May 25, 2018 meeting. The current rules prevail until the new regulations are adopted and published.
- The legislature passed changes to the Hazardous Waste Act and the Ground Water Protection Act that give NMED the authority to establish a certified tester program that would be similar to the certified installer program.
- The legislature also passed House Bill 2 that appropriated \$1,000,000 from the CAF this fiscal year (2018) and another \$1,000,000 next fiscal year (2019) for remediation of a brine well at a critical intersection near Carlsbad.
- The bureau is also preparing to propose changes to Part 123 (formerly Part 17), the regulations that pertain to the the administration of the CAF. The bureau will be filing a petition for a hearing to the Secretary of the Environment Department. The proposed changes are partially to update citations to make them consistent with the changes in the rest of the regulations, and changes are also proposed to clarify some language and requirements in part 123. Public outreach, including mass emails, notices in newspapers, and other notification methods, will be used to publicize the hearing.

Ms. Bahar advised the board that the New Mexico Department of Finance and Administration is working to record the revenue of the Petroleum Products Loading Fee within the fiscal year in which it is collected. As a result, FY18 may have up to 15 months of revenue recorded in 12 months, which will be reflected in the unobligated balance as of June 30, 2018. The unobligated balance on June 30, 2018 determines the Petroleum Products Loading Fee for the upcoming year.

Mr. Ruben Baca brought up an issue related to owners who have facilities on Indian land. Ms. Bahar reported she was made aware of at least one incident and discussed the matter with EPA. As discussed with

EPA, although states have until October 13, 2018 to update their regulations and apply for state program approval, for facilities that are within state jurisdiction and are co-regulated by EPA, EPA will enforce the federal rules until the state regulations are updated to reflect the new federal regulations. This will affect about 109 facilities in Region 6, 14 of which are co-regulated in New Mexico. Thus, EPA notified a tank owner of a facility within the external boundaries of a Pueblo that the state-approved A & B operator training was not compliant with the federal regulations, and, in order to be compliant, the Class A/B operator would need to take the training on the EPA website and pass the test, that is, get a minimum of 80% on the test. Mr. Reggie Roberson stated that at a particular site, EPA is asking for a sump test in compliance with state regulations, and that the state does not have any such regulation, but they want this done by October 13, 2018. Ms. Bahar said that she could get additional clarification from EPA, but that, as previously discussed, at sites that are co-regulated, EPA has authority to enforce the federal regulations, and encouraged tank owners to comply with the applicable regulations.

Discussion ensued about problems with facilities under multiple jurisdictions, and past and current efforts by the bureau to minimize these problems. These problems are arising now due to the issues with differing timeframes for implementation of new federal and state PST regulations and due to turnover of personnel at EPA. These issues are temporary until the state PST regulations come into effect. In response to a question from Mr. Baca, Ms. Bahar replied that this does not affect corrective action, and that as long as owners and operators are in compliance with NM PST regulations, they will have access to the CAF as provided by the regulations. Mr. Baca asked if the bureau will contact affected tank owners and operators. Ms. Bahar responded that the bureau inspectors will be advised of this issue so that they can explain the situation and provide guidance accordingly. Ms. Christine Cherrett of EPA, who was present at the meeting, introduced herself and committed to take the information back to her office and assist with coordination.

Mr. McLin asked about the future of the current members of the Storage Tank Committee, given that a new governor will be elected this year. Discussion and questions ensued about whether there will be a new committee or whether some of the committee members will continue to serve. Ms. Bahar replied that the terms are intended to be staggered and cross over administrations. Based on previous guidance, the current members may continue to serve on the committee until otherwise notified.

Item #9 NEXT MEETING

Based on discussion, the next meeting was tentatively scheduled for December 12, 2018.

Item #10 ADJOURNMENT

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

The meeting adjourned at approximately 10:45 a.m.