The meeting of the Storage Tank Committee (STC) was held at the NM State Public Education Building, Mabry Hall Auditorium, on the NW corner of De Vargas Street and Don Gaspar, across the street from the Supreme Court Building and next to the Bataan Building, Santa Fe, New Mexico 87505 on April 18, 2007. Chair Jim Norton called the meeting to order at 10:10 A.M.

Members Present:

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

Members Absent:

Wilfred Rael, STC Member (deceased)

Other Representatives Present:

Donna Gary, EPD
Jim Davis, NMED/PSTB
Kalvin Martin, NMED/PSTB
Joyce Shearer, NMED/PSTB
Lorena Goerger, NMED/PSTB
Jennifer Pruett, NMED/PSTB
C. Tyler Irwin, CDM
R. J. Dally, Thriftway

Justin Ball, Kleinfelder
John Casey, Basin Engineering
Kyle Kerr, Envirotech, Inc.
Brad Billings, BAI
David Wagner, Western Technologies
Andy Freeman, Hall Environmental
Pinu Stout, ENIPC, Env.

Item #1 Roll Call

The PSTC Administrator took the roll and noted a quorum was present.
The Chair, requested a moment of silence in honor of A. Wilfred Rael, Committee Member, who passed away a few months ago.

**Item #2  Approval of the Agenda**

**Action:** Mr. Briggs moved to approve the Agenda as presented. Mr. Chavarria seconded. Motion passed unanimously.

**Item #3  Update on Corrective Action Fund**

Donna Gary, Manager of the Office of Finance and Budget, provided an update on the progress of the SHARE database. Ms. Gary indicated that things are looking better and that the Petroleum Products Loading Fees are back on schedule and that we are getting them timely. There are still some inexplicable things that happened. If you recall that on October 17, 2006 and December 15, 2006, the checks issued did not get posted to SHARE and in February SHARE stopped posting checks all together. These problems were resolved and currently things are looking good. Ms. Gary also presented an update on the Corrective Action Fund to the Committee for the months of:

**January:**

- Payments: $909,890
- Receipts: $1,705,644
- State Lead: $106,628
- Responsible Party: $803,263
- Operating transfer: $510,608
- Reserve: $1,000.00
- Work plan liabilities: $18,137,765
- Un-obligated: $5,072,587

**February:**

- Payments: $1,121,637
- Receipts: $1,614,771
- State Lead: $360,298
- Responsible Party: $761,340
- Operating transfer: $510,608
- Reserve: $1,000.00
- Work plan liabilities: $18,120,291
- Un-obligated: $5,689,015

**March:**

- Payments: $319,179
- Receipts: $1,555,037
- State Lead: $102,090
- Responsible Party: $217,179
- Operating transfer: $510,608
- Reserve: $1,000.00
- Work plan liabilities: $18,845,540
- Un-obligated: $5,323,493

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

The Chair asked why the March payments were so low. Donna explained that it could be a combination of new SHARE duties given to staff (receipting, vouchers and doing first approvals), being short one person and fewer claims coming in the door. Ms. Gary informed the Committee that they had sent out a reminder letter to consultants and tank owners to get their claims in on time for end of fiscal year. Ms. Gary also informed the Program Managers to shorten their time frame on reviewing and to try to get the claims back to OFB sooner. They had also asked ASD to try to process these claims quicker.
The Chair addressed the Committee and the audience recalling the problem with the Taxation and Revenue Department (TRD) not posting our money to our account. It was decided at the January 10 meeting that the Committee would draft a letter requesting that TRD process our money to our account. Before we could send out the letter, the Taxation and Revenue Department had posted all of our money. This resulted in the Chair’s decision not to send the letter, and we have not any problems with the posting since then.

Per the Chair’s request, Ms. Gary had sent out an e-mail to the committee members and the audience informing them that we were caught up on the posting of the loading fees.

The Chair asked Donna to tell the Committee Members and the audience about the amount of money we have authority to spend for this contract work and then how much we need to seek for a Budget Adjustment Request (BAR).

Ms. Gary explains that Budget means permission to spend. It is not cash and historically we had budgeted $18 million and we may spend less than that. This year, our request for FY07 was $15 million. $11 million for Responsible Party payments and $4 million for State Lead payments. We are approaching the end of the fiscal year and we are able to pull from the database what we owe for each contractor for deliverables to be completed on June 30th or before. We will be doing a BAR increase of four million dollars based on that projection. That is what we look at and we are aware that deliverables may be delayed.

Mr. Jim Davis explained that they calculated the need for an additional four million based on the calculation of deliverables that are due from now towards the end of June.

Mr. Ronny Pynes asked if this is the effort we are taking to avoid what we encountered last fiscal year when there was a panic and concern from contractors getting paid.

Mr. Davis’s answer was yes and he explained that the money from the BAR would be split between State Lead, Responsible Party, & Emergency Response Contracts.

The Chair instructed Mr. Pynes to look at the year to date numbers to show that last year at this time of year we spent $13.5 million and this year $7.5 million. Last year was different due to the big Graves clean up. Last year our budget authority was $18 million and this year it is $15 million.

Mr. Davis informed the Committee that by the time we meet again in a couple of months we anticipate that the $7.5 million listed on the year to date will be a much larger number.

Mr. Ryan Briggs wanted to know if this BAR affects future budget requests.

Mr. Davis indicated that next year’s budget of $12 million was set in the legislature about two months ago. This is one of the reasons why we want to pay out as many claims by the end of this fiscal year.

Ms. Gary informed the Committee that we would more than likely ask for a budget increase for FY08, because historically we have been spending more than $12 million. It should not be a
problem when LFC and DFA ask if we have the cash behind it, we can inform them that we do and that we clearly have the clean ups that need to be paid.

Mr. Joe Chavarria wanted to know if by pre-approving or authorizing clean ups before the money is there if we could be shooting ourselves on the foot.

Mr. Davis’s answer was no and explained to the committee that because of the way we’re required to manage the fund we cannot obligate money unless cash is in the bank and we cannot over obligate the fund. Because the fund operates on cash basis we cannot over obligate it.

Ms. Gary explained that behind every budget there has to be uses and sources – uses are expenditures and sources are your revenues, and you have to show that the revenues will be there to cover the expenditures.

Mr. Chavarria wanted to know if you already had a set budget for this fiscal year and you are almost over that budget now and you want $4 million. How did you go over your budget if you anticipated your budget already and now you need it $4 million to complete the fiscal year? Did you over obligate projects?

Mr. Davis said no and explained again that you cannot obligate if you do not have the cash is in the bank. As Ms. Gary pointed out that budget are the authority to spend and the legislature sets budget authority limits for all state agencies. However, this particular fund is recognized as being different and in HB2 (The General Appropriation Act) there is specific language that recognizes the need for a budget adjustment request.

Ms. Gary explained that in a normal operating budget the legislature or your council will say “you’ve got $10,000 to spend on paper and we are going to budget you $10,000”, so you go and spend that $10,000 and it’s pretty certain that those expenditures are controllable and you know exactly what you can spend. If you need to spend more than $10,000 you take it from another budget item and you make a budget adjustment. The nature of the beast is very different for cleanups and the Legislature knows that even though they give you budget authority for $12 million, you may have emergencies and unexpected costs. They give you the flexibility in the General Appropriation Act to ask for a budget increase for clean ups. There is no cap and you go in and ask for the budget to cover your anticipated expenditures. These cleanups are somewhat uncontrollable and unanticipated expenditures and they recognize this and they will give you the leeway to increase your budget to meet your unanticipated expenditures.

Mr. Chavarria asked how many of these can be done in a year?

Ms. Gary informed the Committee they can do as many as needed, but with fiscal planning it should be limited to one maybe two because you try to anticipate the right amount of budget you will need.

Mr. Ruben Baca indicated that under the HB19 program the expenditures stay pretty consistent except for OGC and wants to know if the money that is going to the General Counsel for the lawyers is all being used for CAF projects.
The Chair explained that some of it is to help the Petroleum Storage Tank Bureau but some of it is also for other water needs, such as surface water, ground water and hazardous waste when there is a water nexus and that sort of thing. It is used for legal issues on water.

Mr. Baca explained that he brought this up because the session just ended and he was drilled a couple of times by a couple of senators that wanted to know how much money was being taken out for legal services. Mr. Baca did inform the senators that he did not know the exact amount because he did not have the figures with him but informed them that yes some of the money was being taken out and that HB19 gives them the authority to do that.

Ms. Gary indicated that she did change the analysis per the Chair’s request to break out what percentage was being spent for FY07 under HB19, which is 17.2% out of the available 30%.

R. J. Dally wanted a clarification on the YTD payments for 05 a drop of about a million in a half between February and March everything else goes up and does the $12 million budget for next year include the operating budget and if that is the case is $6 million available remediation payments?

Ms. Gary apologized because the report was incorrect. In January the YTD read 8.7 Million, in February 9.4 million, and in March it has to be more than 7.9 million it has to be 10 million plus.

R. J. Dally wanted clarification about the $12 million budget set by the state legislature and the operating budget is still $6 million and the operating transfer is over $500,000 a month does this mean there is only $6 million left for payments next year?

Mr. Davis explained that the operating transfers do not hit the budget authority they have no effect on the $12 million budget authority is for both the responsible party and state lead payments. The operating transfers hit cash balances so they remove cash and it does not affect the budget authority. The amount of $12 million is for the beginning July 1 for FY08.

Mr. Baca asked why the budget authority of $18 million for FY06 was reduced to $15 million for FY07 and now been reduced to $12 million for FY08.

The Chair explained that the request of $12 million was based on the assumption that the whole 30% was going to be used for water and matching funds needs and it was also based on an analysis of our historic spending patterns and we wanted to keep it at the historic level.

Mr. Chavarria wanted to know what the average budget carries over is to the next fiscal year.

The Chair explained that in the past years we have asked and gotten really pretty high amounts to spend with the idea that we would not need to go in and ask for a BAR. We usually got $18 million and there were times that we left a couple of million on the table. It didn’t really matter because it was budget authority to spend and what really mattered was these numbers that we look at to make sure we have the money in the bank. In recent years its been getting more close to the actual expenditures that we will be spending which I think is good fiscal management. So DFA and LFC are looking at it more closely and they are keeping us within a narrower budget. So when there is budget on the table it is just authority to spend the money it is not really something that matters in the way that a checkbook does.
Mr. Chavarria is concerned because you have to go through two different levels to get that budget approved and they look at your audit and say you request $4 million last year and you do not spend it so why do you want an additional $4 million.

Ms. Gary said that if she had to provide justification she would indicate that cleanups are uncontrollable, unavoidable and unanticipated and because of that we do not have solid control as to what costs we would incur. And the legislature recognizes that in the General Appropriation Act since it clearly reads that if you need more budget because you had emergencies and costs are going to be higher then there is the authority to request a budget increase.

**Item #4  Update on Status on Remedial Action Sites**

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

**Work plan approvals January 2007;**

57 RP Workplan approvals: $1,731,342.86  
13 SL Workplan approvals: $143,695.04  
32 RP Addendums: $221.97  
6 SL Addendums: $63.09  
Totaling: $1,731,564.83  
Totaling: $143,758.13

*Monthly grand total of $1,875,322.96*

**Work plan approvals February 2007;**

58 RP Workplan approvals: $1,403,463.01  
13 SL Workplan approvals: $161,060.40  
42 RP Addendums: $330.57  
2 SL Addendums: $11.27  
Totaling: $1,403,793.58  
Totaling: $161,071.67

*Monthly grand total of $1,564,868.25*

**Work plan approvals March 2007;**

51 RP Workplan approvals: $1,351,175.41  
7 SL Workplan approvals: $206,224.15  
18 RP Addendums: $198.78  
4 SL Addendums: $36.53  
Totaling: $1,351,375.19  
Totaling: $206,260.68

*Monthly grand total of $1,557,634.87*

PSTB showed an aerial photo of the town of Penasco where back in December a resident of Penasco called the Drinking Water Bureau reporting that they had gasoline tasting water and petroleum vapors in their homes. PSTB went with DWB to Penasco to gather samples along the water line. Ms. Shearer indicated the various areas along the water line that samples were pulled from and what the results of these samples were. Ms Shearer had also reported that a there is a detection of some petroleum products in a section off of the water line. The A-1 Auto Site seems to be where the source of the contamination. PSTB was informed by some of the home owners in Penasco that they believe the UST’s at this particular site are still there. We have provided kitchen tap water filters for the 12 homes that we detected petroleum product contamination.
The owners have requested to have filters placed throughout their homes and we have ordered and received the filters and we are hoping to complete installation by the end of next week.

Our plan for this after speaking with DOT being that this is a State Highway is to try get as much of the contamination cleaned up as possible in one attempt because DOT does not want us digging up their road more than once. PSTB will do more investigation in other areas along the water line and to replace the water lines. At this point it is estimated that we will have to excavate about 12,000 cubic yards of contaminated soil, replace 700 feet of water line and replace the service lines to the residences. The estimated cost for this based on a worst case is about $2.9 million.

Mr. Davis has asked Mr. Chavarria to help get in touch with Picurís; we have contact information but have been unsuccessful in contacting anyone. About 40 feet of the water line that needs to be replaced is on Picurís Pueblo land.

Mr. Chavarria said there is a representative here and she represents the Eight Northern Pueblos Council and she would be the best contact.

The Chair wanted to know what PSTB is going to do to notify all of the citizens of this town about what will be happening to avoid cause of alarm.

Ms. Shearer informed the committee that there was a public meeting in Peñasco about a week or so ago. Daniel B. Stevens & Associates presented this plan on our behalf. It was attended by most of the residence that have been affected. PSTB has been talking to the residents and they are assuming that they are communicating amongst each other. We have posted public notice through the Santa Fe New Mexican newspaper and our web site. We should have another public meeting to advise the community of road detours and so forth.

Ms Shearer indicated that sometimes Owners, Operators and Consultants have issues that they cannot resolve with their project managers. They are reluctant to call Ms. Shearer and they are not sure what to do. So PSTB has assigned a Facilitator in the Bureau to be the first contact for anyone who has a problem that they are not able to resolve with the project manager. This Facilitator will be Jeff Mills he is one of the Santa Fe Team Leaders and his phone number is (505) 984-1817.

Item #5  Update on Prevention and Inspection Program

Mr. Kalvin Martin, Prevention Inspection Program Manager, reported on a couple of topics. One is that they have had a lot of turnovers lately. They have had four resignations in Prevention Inspection and Tank Fees Program and a transfer of a position. We have been working on hiring five positions since January. We have filled two of the vacancies. For the Tank Fee position we hired Bertha Aragon and a new inspector started in Las Cruces last week by the name of Timothy Matson. We transferred a position to Farmington and Tom Gray accepted our offer. There are three more vacancies, one is the Supervisory Position in Santa Fe, we will be advertising for an inspector position in Farmington, and we are currently interviewing for Inspector position in Albuquerque.
During the last meeting Mr. Ronny Pynes had brought up the question of how do we compare with other states the number of inspectors vs. the number of facilities inspected? Mr. Martin conducted a telephone survey with his counter parts with the neighboring states. We compare quite well with Oklahoma. Oklahoma has twice as many tanks that we have and they have twice as many inspectors that we have. In New Mexico we currently inspect over 2,100 facilities and Oklahoma has 12,000 tanks and I do not know how many facilities lets assume the same kind of proportion I would say that they may have 4,500 facilities and they have 22 inspectors and we have 12. In Arkansas and Louisiana they also have around 4 to 5 thousand facilities each. Arkansas maintains the about the same number of inspectors that we have however they have twice as many facilities and they try to inspect a facility every three years where we try to do ours once a year. Louisiana is pretty much the same as Arkansas. I believe Colorado has about 8,000 tanks and 13 inspectors and they do not inspect tanks at the same frequency that we do.

PSTB will be mailing out tank fees on the last week of May to about 900 owners.

Mr. Pynes is requesting a written and more detailed analysis that we can look at for the next meeting.

Mr. Baca is also requesting a print out of the number of tanks and facilities to be provided in the packets for the upcoming committee meetings.

Item #6 Update on Regulation Process

Mr. Jim Davis, Bureau Chief briefed the committee on the effort of the bureau for the next two years on the status of the process of the regulation revision.

Jennifer Pruett, Tanks Fees Staff Manager presented a power point presentation on the steps that the bureau has taken and will be taking to revise the regulations. A handout was provided in order to follow the presentation. The presentation covered the proposed revisions to parts 1-5, and the status & schedule of the stakeholders meetings. The proposed revisions include changes to definitions, registration, annual fees, tank system design, construction, installation, operation and maintenance. The Bureau is also working on revisions for parts 6, 8 & 14.

Item #7 Approval of January 10, 2007 Meeting Minutes

Action: Mr. Aguilar moved to approve the minutes as amended. Mr. Chavarria seconded. Motion passed unanimously.

Item #8 Other Business

None.

Item #9 Next Meeting is June 20, 2007.

After discussion, the Committee decided the next meeting of the Storage Tank Committee will be held in Santa Fe, New Mexico, on June 20, 2007 at 10:00 a.m.
Item #10  Adjournment

The meeting adjourned at approximately 12:15 pm.

Action:  No Motion taken

Petroleum Storage Tank Chairman