

UNDERGROUND STORAGE TANK POLICY COMMISSION

Arizona Department of Environmental Quality

February 20, 2002 Minutes

Chairman Michael O'Hara called the meeting to order at 9:15 a.m. in Room 1710. Members present included Ian Bingham, Roger Beal, Michael O'Hara, Michael Denby, Harold Gill, Myron Smith, Elijah Cardon, Karen Holloway and Nancy Jamison.

Guidelines for Conduct

These guidelines for interaction between Commission Members and the Public were prepared by Michael O'Hara following a meeting on the Arizona Open Meeting Law with Laurie Woodall of the Attorney General's Office. She is the attorney assigned to give the Commission legal advice. The discussion related to the noticed agenda items and interaction on these items with members of the public. Nancy Jamison suggested that we change the word "should" to "must" in paragraph one, line four of the Guidelines document. (See attached Guidelines for Conduct)

Laurie Woodall was present today and clarified questions from commission members. In response to the question of how detailed does the agenda have to be Laurie replied that the agenda should provide sufficient information so that a member of the public would know whether he wanted to attend the meeting. She suggested that we set the agenda for the following meeting at the end of each commission meeting. A standard item therefore could be "Items for next meeting's agenda". If the public brings up an issue for the next meeting, we should not discuss the item at that time; however, we can ask the member of the public to give us more detail regarding the issue for the future agenda. Some agencies specify an agenda item as to whether it is informational, for discussion, for decision or whether there will be staff briefings on the agenda item. Laurie Woodall said that it is unusual for there to be a lot of interaction between members of the public and the commission. Laurie went on to say that she recommends a conservative approach to protect us from complaints from the public, i.e., "provide more detail rather than less" in describing the agenda item even if it may limit discussion. Complaints from the public against a commission on Open Meeting Law violations are taken very seriously by the Attorney General's Office. The reason Laurie is advising the commission is to protect us from any embarrassment due to such a violation.

In response to a question about whether we can have a Call to the Public under each agenda item, Laurie Woodall said yes. In response to a question whether commission members are required to respond to the public, the answer was no. Commission members noted that since we lack our own staff we rely on the regulated community to provide input on issues before us. Laurie was asked whether our "Call to the Public" under each agenda item would allow such input from the public on the agenda item. The answer was yes.

Commission Minutes

John Pearce, Dan Kelly and several members of the commission were unhappy about the lack of detail in the minutes of the January meeting. It was pointed out that we needed a state of the art tape recorder (there was no recorder at the January meeting). Some were uncertain about how the decision was

made to discontinue using the court reporter for our meetings. If cost of the court reporter is an issue, this should be discussed at the next meeting. This item will be on next month's agenda.

Elijah Cardon asked how dissenting views or votes would show up in the minutes. Karen Holloway replied that minority comments or dissenting votes on a motion are normally reflected in the minutes of a public body.

2001 Annual Report

Mike O'Hara and Al Johnson got together and incorporated comments from commission members into the redlined, revised version of the Annual Report. There were no comments from the public. Roger Beal made a motion that we approve the revised version of the Annual Report. The motion was seconded by Nancy Jamison and was approved unanimously.

Proposed UST Legislation

Three bills were handed out to the Commission at the meeting. (SB 1338, SB 1131, and HB2657). Myron Smith commented that what we have today are not the final versions of the bills-that we should be voting on the intent of the bill rather than the actual language.

SB 1338. John Pearce reported that SB1338 is specific to the UST Program statutes. It is a work in progress from last Thursday's meeting of the Natural Resources and Environment Committee. It is scheduled for a vote tomorrow although he doubted that a vote will take place tomorrow due to the budget process. The general intent of the bill is to provide an instrument to weed out certain inefficiencies in the claims review (SAF) process. There is no funding for more work on the actuarial study and there is a change in the definition of "corrective action".

Nancy Jamison has concerns about the removal of corrective action (CA) standards in 49- 1005. The proposed amendment to 49-1054 (c) removes any incentive to change approaches in CA-to look for more cost effective ways to resolve problems. Michael Denby said he thought the bill attempts to resolve a conflict in the Department between the rule and statutes so that costs that are pre-approved but not within the actual line item can be addressed and revised appropriately without kicking them back.

John Pearce understands Nancy's concerns and suggests getting the Department and stakeholders together to draft appropriate language. He thought the commission could address this and perhaps endorse the outcome of such meetings. There will still be time to influence legislation following the commission meeting, March 20th. We may have two more meetings before the Legislature acts on this bill. Michael Denby said he thought it was logical for us to recommend to the department UST legislation although he does not know about the open meeting law and making such a recommendation today.

Elijah Cardon said he is not conversant with the proposed legislation. How can we take action on these bills? Mike O'Hara replied that we can discuss and agree on the concepts in these bills. Ian Bingham asked whether we were going to negotiate legislative language here. Myron Smith said we can

look at and vote on concepts but we need to resolve differences in stakeholder meetings. John Pearce commented that it might be that a bill is not needed but he believes there will be a final bill ready for discussion at the March 20 meeting of the commission. Michael Denby said he would like to see a better definition of inefficiencies in the process-he would like to see what we mean by these inefficiencies-- what's the problem we want to correct? John Pearce asked whether briefing papers from the stakeholder group would be appropriate for discussion. Mike O'Hara replied that they should be submitted two weeks before the meeting so they can be distributed to commission members to review before the meeting. Elijah Cardon said rather than discuss the language of the bills it would be better to have the policies and procedures identified and discuss those and give direction on and make specific recommendations based on those policies and procedures. He would encourage those to be discussed at the next meeting.

SB 1131. John Pearce reported that this is a bill sponsored by Weights and Measures relating to enhanced vapor recovery. It will require a phase-in phase of this equipment. He recommends we approve this bill for orderly implementation of this vapor recovery equipment over the next several years. Stakeholder groups are in favor of this bill. Although it is in the best interest of the industry, there is confusion at the Legislature regarding the bill (due to a legislative staff briefing report).

Nancy Jamison expressed concern that we are lobbying the Legislature for this bill. Myron Smith -lobbying is a gray line--suggested discussion of enhanced vapor recovery at our next meeting. Suggests we support whatever would be put forward by W & M and supported by ADEQ's Air Quality Division. Mike O'Hara said obtaining a briefing paper would be helpful. Karen Holloway asked whether the ADEQ has prepared a legislative analysis or briefing paper already that we could review. This should go on next month's agenda. Ian Bingham wants information on how this bill would affect ADEQ's compliance role. He wants to see the relation between ADEQ's compliance role and implementation of vapor recovery.

Question was raised about whether we can influence changes in the UST program, or support bills that have that effect. In our enabling legislation 49-1092 (E) (2) we may "transmit specific recommendations for improving the program to the director, the speaker of the house of representatives, the president of the senate, and the governor."

HB 2657. John Pearce reported that the intent of the bill is to develop more funding for the UST Program by reducing backlog and it would generate \$25 million more per year for the fund by increasing the gas tax 1 cent per gallon. Some owner/operators would like more assurance of where the dollars are going. Mr. Pearce does not believe this bill has much chance of success with the governor's office-the Governor does not want to increase taxes.

Technical Subcommittee Updates

UST Rule and Guidance Document. Hal Gill reported that there has been no meeting in two weeks on the guidance document. We got through everything except section 6 on RBCAA which will be reorganized by staff. Once we get the revised section 6 we will schedule a meeting. We would like ADEQ's latest copy of the rewrites so that they can be distributed to commission members for review

(all except section 6). The Policy Commission could then begin discussion of the guidance document.

Ian Bingham said that his staff would be able to finish rewrites by next week (except for section 6). The Rule was submitted to GRCC February 13, 2002. It will probably be scheduled for a May hearing date. We should have time to review the guidance document before May.

Dan Kelly asked whether the Rule was substantially the same as the rule we saw in October. The answer was yes.

SAF/CRU Claims Backlogs. Hal Gill had informed ADEQ of what data we wanted regarding backlogs.

Ian Bingham read a report which is attached to these minutes. This report reflected the work in progress in the month of January in the Claims Review Unit. He reported on Direct Pay Applications, Preapproval Applications, and Reimbursement Applications by length of time in the unit or whether the application was in appeal status. It was noted that the CRU received 83 applications in January and completed review of 108 applications in the same month.

Patricia Nowack reported on the status of SAF Applications as of February 19, 2002 (see attached report). One was in the initial staging, being entered into the computer, 22 were waiting for further information from the applicant, 18 were in cost review, 13 were having payment determination letters generated, and 38 had received payment approval.

Commission members expressed some difficulty in reconciling the numbers from Ian's floor and those from Patricia's floor. Everything that Ian gave us, minus the appeals, and all of Patricia's have not received the initial determination process. Karen Holloway suggested that a simple flowchart of the process might help commission members better understand the numbers and the backlog. Patricia said she has flowcharts of the process. Hal Gill said he would get ADEQ to clarify the numbers and the process and get a flow chart on the process for commission members.

Teresa Callaghan would like to know how many applications in the over 180 days category actually have been in the queue more than a year. She knows of one that dates back to September 2001. Mike O'Hara agrees with the concept of getting claims processed as soon as possible although there may be exceptions for operators like Chevron and Tosco which may take three or four years.

Ian Bingham said that when he became manager he had three reviewer positions vacant and shortly thereafter, a unit manager left. He has filled the vacancies, began training the new employees and he believes he now has the resources to work the backlog.

Dan Kelly asked why the SAF Administrator is not tracking the backlog. Mike O'Hara suggested he contact him.

There was a question raised on the number of appeals. Patricia shows 31 in informal appeals process.

Mike O'Hara asked whether Pat and Ian reconciled the numbers. Hal wants meaningful numbers. Patricia said she would provide us with a simple flowchart.

MBTE Policy/Guidance. The latest timeframe on MBTE policy will be incorporated into the guidance document. Many sections in the guidance document are referred to in the policy so there will have to be many changes in the guidance document. Concern was expressed that once the rule goes into effect, the guidance document will not explain how to do the sampling. We need to look at this as soon as possible.

SAF/Stakeholder Meetings. Patricia Nowack reported that a meeting is scheduled for February 27th on the new cost ceiling survey process (8-10 a.m. on drilling tasks, 10-12 noon on contractor tasks, and 2-5 p.m. on analytical methods used by labs.) She will schedule additional meetings with consultants. A March 7th meeting is scheduled which will be information gathering on changes to the draft application. ADEQ wants input from stakeholders.

Service Station Drywell General Permit Developments. Hal Gill reported that they are still going back and forth, making a drywell rule specific to service stations. No meeting date has been set.

Policy Determinations by ADEQ. Ian Bingham said he has no time to make new policies. John Kennedy asked whether there are any pending changes-are policies considered substantive? Ian replied that there would be no policy on reopening sites. John Kennedy: any thought on revising the SAF rule?

Myron Smith commented that when we talk about issues we should be talking in generalities. He wants us to avoid possible conflicts of interest.

Discussion of Possible Agenda Items for Next Meeting

- General authority to look at agenda items
- CRU/SAF Backlogs - data analysis, over time is it improving or not
- Education/professional Backgrounds of CRU Reviewers - are we micromanaging or do the new FTE's meet the criteria approved by the legislature when we obtained additional funding for employees to save money for the program
- Discussion and vote on how we record the commission meetings. How we would cover the costs of the court reporter.
- More discussion of legislative bills and discussion of specific policies and procedures
- Discussion of briefing papers - can we get someone from the Department to brief us on legislative issues
- What is ADEQ's policy on paying interest on outstanding SAF claims? What is impact to the fund? Does interest accrue?

Elijah Cardon asked whether there was some way for the Department to provide analysis of bills that impact the UST Program. There is not a process by which this commission sees policies and

procedures that relate to the UST Program. He wants to see how changes in law and policy may affect retroactively work already completed and submitted.

Adjourned 12:15 p.m.

Respectfully submitted,
Karen Holloway
Commissioner

Attachments: Guidelines for Conduct
CRU Process (Backlogs)
Status of SAF Applications (Backlogs)