

TEXAS METALS ADVISORY COMMITTEE

MEETING MINUTES

Tuesday, July 25th, 2017

Texas Department of Public Safety, Regulatory Services Division
5608 Guadalupe St., Austin, Texas 78752

Members Present: Chairman Arnold Gachman, Major Jay Alexander, Tom Baker, Jim Shapiro, David Bayouth, Carlos Breeden, Jesse Fite

Members via Phone / Online: Jerry Brewer, Joshua Dean, Sim Woodham,

Member Absent: Don Sowell

Non-Members Present: Michael Ashlock, Kevin Haynes, Martha Medlin, Carrie Fortner, Jari McPherson, Steve Moninger, Liz Kisamore

Chairman Gachman called the meeting to order at 9:03 am. Introductions by all present; including guests Michael Ashlock of Charter Communications and Kevin Haynes of Texas Port Recycling.

AGENDA ITEMS

1. Old Business

Chairman Gachman began the meeting with a review of the minutes from the previous meeting. Major Alexander made a motion to accept the previous meeting minutes from December 6, 2016, motion seconded by Jim Shapiro. Motion passed by all in attendance.

Retirement plaque presented to Tom Baker by Chairman Gachman, Major Alexander, and RSD Assistant Director RenEarl Bowie.

Major Alexander and Chairman Gachman stated that in the interest of time, agenda items will be discussed in the order of importance; not in the order they were originally listed. Minutes will include items with their original number as listed on the agenda.

2. Advisory Committee Member Selection & Participation

Major Alexander shared an overview of the expectations for members selected for the advisory committee. Members are expected to attend meetings, and participate in discussions when present at meetings. Major recommends lengthy conversations going forward with those being nominated to the committee. Chairman Gachman and all other members in attendance agreed.

6. Texas Metals Program Online Training Update

Major Alexander provided a brief overview of the law enforcement to be offered by RSD. This training will serve two (2) purposes: to provide more information to the metals industry on requirements, and to provide further education in order to gain compliance. The intent for law enforcement is to provide more information; not to shut down someone's business. Demo of introduction module and registration module provided for committee. A link to the test site will be provided by email; Major Alexander asked the committee to review the

modules when received and provide input to allow us to make any improvements/modifications necessary. The intent of the training modules is to follow all steps of operation needed by an MRE; registration, transactions, reporting requirements, inspections, etc. Jim Shapiro shared concerns with information being shared in the training videos that specifically references requirements by local ordinances (example: Dallas requires thumb print, photo of vehicle, etc.). Major Alexander responded that DPS will add a disclaimer to each of the videos explaining that some of the information in the videos applies to local ordinances only and may not apply to MREs in all areas. David Bayouth asked if it would be possible to identify the specific portions in the videos that apply to local ordinances only. Major Alexander stated that we would look into that possibility. Jim stated that he feels this could potentially still confuse some MREs, while Major Alexander stated that we would do everything possible to mitigate possible confusion.

3. Senate Bill 208

A brief overview of the intent of SB 208 was provided by Major Alexander. DPS' authority to implement administrative penalties has now been expanded to more violations, and also gives DPS further discretion to implement these penalties. A penalty schedule was created and will be included in the administrative rules; this schedule indicates the maximum penalty allowed for each violation. In most instances, the maximum penalty will not be assessed. Steve Moninger stated that this schedule has been in progress for a long time, and that this schedule will give DPS more enforcement opportunities outside of suspension. The issuance of an order of suspension inevitably leads to a hearing, leading to excessive use of resources by both law enforcement and the MRE. These administrative penalties are intended as an alternative to severe disciplinary action; while still encouraging compliance. Tom Baker asked if the fines for a certain action were reduced, could the order of reprimand also be possibly be withdrawn and reduced to an advisory letter only. Major Alexander stated that yes; DPS exercises discretion in the assessment of all disciplinary actions, and work to keep all mitigating factors in mind when making those types of determinations. This type of reduction in disciplinary action is frequently handled during a preliminary hearing. Jim asked if law enforcement personnel conducting MRE inspections are trained to look for software glitches. He shared that businesses in the industry have been hiring attorneys in order to resolve issues surrounding a simple software glitch. Major Alexander shared that only (1) preliminary hearing has been conducted with an attorney present for the phone call; all others have been conducted with the owner and/or statutory agent only. He also stated that yes; law enforcement personnel are being trained to look for such issues, and also exercise discretion when imposing disciplinary actions. Steve added that discretion is also used during the preliminary hearing, and that 99% of cases involving software glitches, database problems, etc. are dismissed or downgraded due to mitigating factors.

Chairman Gachman asked whether or not a potentially explosive device would need to be reported, even if it had been purchased from the military or military contractor. Major Alexander stated that he and Steve would need to examine the specific language in SB 208; but that yes since it is an explosive it would need to be reported, regardless of the source. Chairman Gachman also asked if federal agencies were aware of this new legislation. Major Alexander stated that to his knowledge, no they were not aware. DPS will begin publicizing this information beginning August 1st. Chairman Gachman also asked about notifying states bordering Texas of the new requirements per SB 208. Major Alexander stated that we would be reaching out to them. Major Alexander also mentioned the possibility of creating a pamphlet for explosives similar to the one created for battery reporting guidelines. He asked the committee to submit photos of items as found to assist in the creation of this pamphlet.

Revised administrative rules will be presented at the next Public Safety Commission meeting, and the public comment period will begin after approved. DPS hopes to speak at this meeting and advise that the rules have been revised with the approval of the advisory committee. Chairman Gachman asked about clarifying registration expirations to allow them to synchronize. Major Alexander responded that it is too late to add to the rules now, but that we could potentially submit for the next meeting in December. Jim asked if the rules were public at this time, Steve responded that they will not be made public until after the PSC meeting, during the public comment period. After the public comment period ends, the rules will go before the PSC again, and if no changes are made then they will be approved and made effective. If substantial changes are needed, this would slow the process considerably.

Break at 10:16 am, resume at 10:25 am.

4. Cash Card Rules

Chairman Gachman shared concerns with cash transaction card implementation, and asked that this be discussed to air out any issues and ensure that all are on the same page. Major Alexander shared that DPS does see some violations by the MRE, varying from not completing the cash transaction card application to paying customers in cash with no application on file. Overall, DPS does not see a large number of MREs not in compliance with the law. DPS continues to ask the industry to report these types of violations to allow for enforcement of the law. Major Alexander reminded the committee of the portal to report this type of information; STORM (Stop Theft Of Regulated Metals) on the DPS website. Jesse Fite shared that the City of Houston has more stringent requirements for cash transaction cards, that a copy is required to be included with the transaction documentation. Chairman Gachman stated that he is concerned with enforcement in areas outside of dense areas such as Houston/Dallas. Jesse shared that they receive information on MREs located in other areas as well, and they refer those to the correct jurisdiction for enforcement. Chairman Gachman also expressed concern over MREs accepting another business' cash cards, how does the MRE know this card is valid? He shared that his locations do not accept cards from other MREs for this reason. Jesse stated that there are procedures in place; the MRE could call the other location to confirm the validity of the card. He also shared that making cash transaction card information accessible online has helped cut down on fraud; law enforcement has visibility to see these cards and know what has been issued. Soon after implementation of the cash transaction card requirements, Houston law enforcement was encountering MREs keeping cash cards that had been issued by another MRE and issuing their own; essentially stealing their customers. Houston PD was able to handle this situation quickly by communicating with MREs not to do this.

Tom asked if part of the inspection process was to ask to see return mail envelopes, to see proof that cards have been mailed. Jesse stated yes; it is part of the inspection process. Tom also asked if expiration dates were examined, Jesse that yes; dates are checked. Jesse also stated that accepting a copy of a cash transaction card from another MRE is a matter of discretion for the MRE. Jim asked how the cards would be renewed, since most of the cards originally issued would be expiring soon. He asked if the application could be redone, but Jesse stated that the customer would need to re-sign the application. Jim also asked if the renewed card could be given to the customer in person, and both Chairman Gachman and Jesse stated that per statute, the card would need to be mailed to the applicant. Renewed cards would need to be issued to expire two (2) years from the date the new card is issued. Thumbprint, photo, etc. would all need to be redone. David expressed that he would like to forward date the renewed cards so as not to lose time (Example: renew

card today, but not be valid until 9/1/17 so the card is valid a full two (2) years). Major Alexander stated that DPS would be reaching out to legal staff for interpretation and sending that information back to the committee as soon as possible. This topic has been tabled until further interpretation is obtained.

5. Do Not Buy List – Houston PD

Jesse shared that after consulting with city legal staff to determine if it was lawful; the Metals Theft Unit has been keeping track of all metal theft suspects. Most are repeat offenders, with the same type of material being stolen. This provides another tool for MREs; if an individual approaches that is on the list it would give the MRE more cause to further scrutinize the materials being purchased from that individual. This list is not mandatory for MREs; it is entirely voluntary. This list allows the MREs that are purchasing this material to be inspected and held accountable for potentially purchasing known stolen goods. Chairman Gachman mentioned the possibility of eliminating a cash transaction card for someone on this list, or potentially have law enforcement become involved. He stated that this list could be an incredibly helpful tool, would just need to further discuss the implementation.

7. Law Enforcement Training – September 2017

Very brief overview of law enforcement training provided by Major Alexander. Training will be held here at DPS, September 25-29th. Currently finalizing instruction assistance from Houston and Dallas Police Departments, as well as other advisory committee members.

8. Other Topics

There has been a significant decline in theft of cell tower batteries being reported stolen. Tom asked why the committee why they thought this was so. Major Alexander shared that he felt the committee had a lot to do with that, including battery reporting guidelines and the publicity of theft issues.

Brief overview of stats provided, active MREs has decreased roughly 15%.

David stated that check fraud occurring through the use of cash transaction cards has risen. Major Alexander advised that this type of fraud needs to be reported to DPS. Jesse also mentioned cashier's checks/money orders as another option, but understands it's not possible for all scenarios.

Motion to adjourn made by Major Alexander, seconded by Jim. Meeting adjourned at 11:38 am.