Airport Beacon Report

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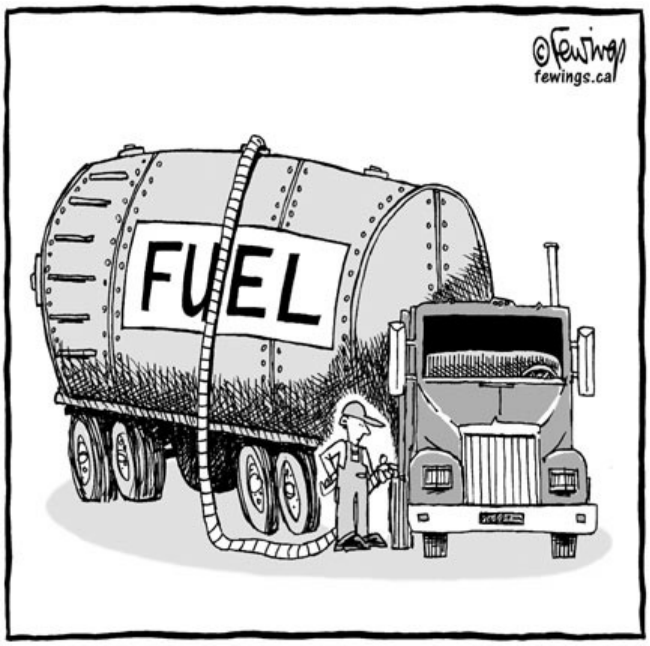
SECONDARY CONTAINMENT FOR MOBILE REFUELERS

By Bobbi Thompson, Executive Vice President and Sarah E. Smith, Director of Environmental Services

One of the topics of interest at the AAAE Annual Conference in Seattle this month was on the Environmental Protection Agency's (EPA) stance on the parking of fuel trucks on airports. A number of aviation fuel providers have already been notified by the EPA that their fuel trucks are subject to regulations requiring so-called "secondary containment" while the trucks are parked, with the EPA contending that these trucks are "mobile" or "portable" fuel storage facilities subject to existing regulations since the rule's inception in the early 1970s. (40 CFR 112.8(c)(11)

SPCC programs are currently required at airports and other locations where hazards, such as aircraft fuel, are stored (40 CFR Part 109, and 3). The EPA continues to enforce implementation of Spill Prevention Control and Countermeasure (SPCC) regulations on airports and aviation businesses. Over the past year, many discussions have been ongoing regarding fuel trucks: Are they or are they not storage containers? In a long-awaited response from the EPA asking for clarification to the rule, the Agency asserts that on-airport mobile refuelers are "mobile or portable storage containers" subject to the SPCC rule relative to secondary containment requirements. Although questioned by airports and FBOs, the EPA declines to find an across-the-board exemption for on-airport mobile refuelers, continuing to insist that they are storage facilities and subject to the storage regulations.



Several industry leaders (known as the Coalition Group) have tried to explain the impracticability of the EPA requirements. However, the EPA plans on issuing comprehensive regional guidance in August 2005 that will address the flexibility in engineering design solutions to provide secondary containment for parked refuelers. (Please note that they although they will provide guidance, nothing was mentioned that would indicate that you do not have to do something, and the demand that these requirements could make on space or cost does not seem to bear weight with the Agency.) The negative consequences that the EPA's SPCC rule could impose on most, if not all, airports and FBOs is severe.

The physical requirements needed to comply with such a rule run counter to the safe and secure operation of airports. For example, it has been suggested that trucks must be parked in a "bermed" area to provide secondary containment. Vehicles would need to be parked in close proximity to each

other to control the amount of designated bermed parking required, significantly increasing the potential damage caused by a fire to only a single truck. In the unlikely event a spill did occur, fuel would pool near the vehicles, again raising the risk of fire. The selected containment areas would be permanent in design, thereby requiring additional land area that would have but a single utilization. In addition to berms, oil/water separators will likely be required. Should this cost be borne by the FBO or the airport?

While the EPA maintains that refuelers were included in the original 1974 regulation, the Agency refuses to recognize the implications of the wording change that dealt with this issue in the 2002 revision. Mobile refuelers had not previously been specifically identified in the regulations until the 2002 revision, thus causing confusion about how the rule actually applies. Furthermore, the question of the definition of an "in-service" and "out-of-service" mobile refueler remains, and the EPA has not yet made this distinction. However, various industry organizations still hold-out hope that some relief from the regulations may be possible, if it can be demonstrated that compliance is impracticable. Maybe a call to your local legislators is needed.

The EPA appears to have some interest in gaining a better understanding of the "impracticable" provision of the regulation and what the procedure is for an aeronautical service provider to fall under this provision. To require airports or FBOs to install or construct large secondary containment areas for extremely low (and some might say non-existent) risk events is both unnecessary and misdirected.

When mobile refuelers are fueling, staged in operating locations so that they may initiate fueling, or traveling to and from aircraft, it may be impracticable for some facilities to meet the sized secondary containment requirement, and it does appear that the EPA will allow for trucks to carry spill kits for the limited instances when a spill may occur during a transfer procedure. Where it is impracticable, some facilities have used National Fire Protection Association (NFPA) design guidelines and/or good engineering design solutions to meet the sized secondary containment requirement. Reasonable engineering design solutions to provide secondary containment when mobile refuelers are not fueling, not staged, or not involved in fueling activity, are based upon site-specific conditions and will not be unilaterally specified by EPA.

There are other concerns with how the aviation industry as a whole interprets the SPCC rule and applies the program to operations at the airport. For example, in the final rule, the definition of the fuel loading/unloading rack, otherwise known as a "load rack", suggests that all areas in which an oil transfer occurs triggers the need for spill containment, regardless of whether a load rack exists at the facility. Another issue is the use of mobile fuel trucks as stationary above ground storage vessels. In this instance, the mobile fuel truck would need to be in a secondary containment structure, because the truck is being used as an above ground storage tank verses portable storage. As with any regulation, you need to be able to interpret the regulation in order to determine applicability and ultimately achieve compliance.

SETTING RATES AND CHARGES FOR FBOs
By Michael A. Hodges, MAI, President and CEO

Hopefully by now, the word has gotten out that a hangar is different from a warehouse in the local industrial park. (Although recent experience has shown that not everyone has gotten the message.) While the primary focus here is the FBO, this is also an attempt to educate both airports and their tenants of the unique characteristics of each and every property and business within a diverse airport environment.

In this time of airports striving to become more financially self-sufficient, in accordance with FAA mandates, sponsors are being forced to expand their horizons with regard to revenue-generating sources, both aviation and non-aviation alike. Therefore, it's important for everyone to recognize the differences in the revenue-producing potential of each type of user.

While every airport wants to maximize the revenue derived from its tenants, it must also recognize that different users can afford certain amounts based upon their revenue sources, potential for growth, and normal operating expenses. Users are in the business of making money, and therefore must be allowed to realize a reasonable profit margin. Not that profit should become a priority over meeting certain financial obligations prescribed by a lease; rather, it is a component of every business which must be recognized. Moreover, while it is not an airport's responsibility to insure that every tenant is profitable, but rather that each tenant has a fair and equitable opportunity to realize a return on their investment. While the FAA's position may be that "everyone has the right to go bankrupt", this is not usually a prudent fiscal or political alternative for most airports.

In addition to FBOs, typical airside properties include various air carrier facilities, maintenance hangars, air cargo facilities, and corporate hangar sites. Of course, there are numerous other aviation-related properties on airports, but these are the most common requiring airside access.

In standard real estate valuation or analysis, "land is land." That is, land has a certain intrinsic value that is minimally affected by its use. The primary factors impacting the value of land outside of an airport are size, shape, utility, location, topography, and zoning. Of these factors, only zoning is controlled by outside forces; namely, the local planning commission or zoning board. In most cases, restrictions are not imposed on a single parcel, but on a grouping of parcels that offer similar, complementary uses upon development. Moreover, regulations typically govern the development of the site, not its continuing operation. However, things are different on an airport.

Airport real estate is unique due to the development restrictions placed upon a site by the airport administration, FAA, the airport's master plan, and its Airport Layout Plan (ALP). Height restrictions, setback requirements, runway protection zones, and other noise and safety areas are designated on the ALP, as are planned developments for various unimproved parcels. Based upon demand projections, future development areas are typically identified for uses such as FBOs, corporate hangars, aircraft storage (T-hangars, tiedowns, etc.), and other aeronautical uses. While changes to the ALP only requires notification to FAA, it generally dictates development patterns on an airport. Therefore, specific planned uses identified on an ALP typically correspond with the site's most probable use over the near term.

In a sense, all airport land demonstrates the same "overall" value, but it is typically comprised of different components. The "value" of an FBO property to an airport is comprised of the rent generated by the land, ramp/apron, and various improvements, fuel flowage fees, percentage rents, and in a few cases, general aviation landing fees. Air carrier airports primarily derive revenues from air cargo and air carrier tenants through rates and charges on land, ramp/apron, improvements, and terminal space, but predominantly through landing fees. However, for corporate tenants, revenues are generally only realized from land and/or improvements, nominal fuel flowage fees, and possibly some landing fees. Consequently, while the net result to the airport may be the same in terms of the return on the "value" of the

land, ground rents paid by various tenants are often very different.

Based upon the aforementioned perception, as rates and charges are being developed on an airport, it is important to recognize the "theory of consistent use." In simple terms, this relates to an "apples to apples" comparison of the facilities to be analyzed. This theory basically implies that FBO land and facilities are similar to other FBO properties, corporate hangar development and sites are similar to other corporate projects, air cargo sites and facilities are comparable to other air cargo developments, and so on.

Why is this an important concept? When rates and fees are being set for an FBO project, it is critical to utilize FBOs at similar, competing airports for comparison. FBOs are unique and it is important to recognize their differences while developing a rates and fees schedule. Many still believe that FAA's position an policy on "fair and reasonable" rates and charges require that all ground rents and hangar rents should be unilaterally applied to all tenants on an airport. However, the FAA's policy actually indicates that an airport must impose similar rates and charges for land and facilities *offering similar services and utility*. Therefore, additional issues such as location, market appeal, supply and demand, revenue potential, etc., should also be considered in the rate-setting process. More than any other use, an FBO is directly dependent upon its ability to generate customers and revenue directly from its facilities. As such, the concept of "comparing apples to apples" is extremely important at your airport in any rate-setting exercise.

Ask ABS!

In the past few issues, we have included a section called "*Ask ABS*", where we request aviation-related questions from our readership. Each month we publish one question that we receive from our readers with a joint reply from our professional consulting team. Even if your question is not selected, all questions submitted will be responded to via e-mail. Please submit a question by e-mailing Mark Davidson at the following: **mdavidson@airportbusiness.net**

This month we are cheating a bit. Partially because Michael is on vacation, but primarily because the most common question over the past month has been the secondary containment issue, which was addressed in this month's lead article. We will try to go back to normal procedures in June by selecting a question of the month.

Airport Business Solutions is recognized as the leader in providing valuation, analysis, and consulting services to airports and aviation businesses, and offers a diversity of backgrounds and experience which provides a new, creative, and "outside the box" perspective on a myriad of aviation issues and problems.

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