

**Minutes of PSTIF Advisory Committee Meeting
October 22, 2015**

Chairman Ayers called the meeting to order at 10:02 a.m. and invited everyone present to introduce themselves.

Members Present:

Steve Ayers, Ayers Oil Co., CHAIRMAN
Gary Bemboom, Bemboom Enterprises d/b/a BeeLine Snack Shops
Todd Burkhardt, Neumayer Equipment Co.
Paul Cox, Cox Oil Co.
Dan Creek (for Tracy Barth), MFA Petroleum Co.
Donnie Greenwalt (for Mark Jordan), Wallis Oil Co.
Ken Koon, MO DNR/HWP/Tanks Section
Ron Leone, MO Petroleum Marketers and Convenience Store Assn.
David Mangelsdorf, Home Service Oil Co.
Ron Morton, Town & Country Supermarket
Heather Peters, MO DNR/HWP/Compliance & Enforcement Section
Ryan Rowden, Missouri Petroleum Council
Jason Smith, Environmental Works, Inc.
Adam Troutwine, Polsinelli
Sonny Underwood, Mid-South Steel Products, Inc.
Curtis Wall, MDA/Weights, Measures, and Consumer Protection Division

Members Absent:

Mark Abel, Abel Oil Co.
Ron Bachman, St. Joe Petroleum
Wayne Baker, Warrenton Oil Co.
Bruce Barnes, Santie Oil Co.
Daryl Bowles, DK Environmental, LLC
Phil Farrell, Double Check Co.
Lori Larkin, AIG
Zarar "Bobby" Lodhi, Lion Petroleum
Stewart McIntyre, Big River Oil
Jack Sachs, Hocker Oil Co.

Staff Present:

Carol R. Eighmey, Executive Director, PSTIF
Thais Folta (for Tim Duggan), Attorney General's Office
Dan Henry, Williams & Company Consulting
Diane James, Executive Assistant, PSTIF
Patrick J. Vuchetich, Williams & Company Consulting

Others Present:

John Bell, MDA/Weights, Measures, and Consumer Protection Division
Darcy Bybee, MO DNR/APCP/Compliance & Enforcement Section
Pam Cafourek, Bemboom Enterprises d/b/a BeeLine Snack Shops
Keller Colley, MFA Petroleum Co.
Don Cripe, MO DNR/HWP/Brownfields/VCS/Long-Term Stewardship Unit
Barbara Garcia, Environmental Works, Inc.
Matt Gross, Superior Equipment Co.
Dave Hansen, Superior Equipment Co.
Erik Ilgenfritz, Midwest Petroleum Co.
Matt Lewis, TRC Environmental Corp.
Rick McKay, Neumayer Equipment Co.
Richard Swartz, MO DNR/APCP/Compliance & Enforcement Section
Kim Warner, Neumayer Equipment Co.
Brian Wiegert, Rounds & Associates

Review/Approval of Minutes – April 17, 2014 Meeting

Sonny Underwood moved that the minutes be approved. David Mangelsdorf seconded. Motion carried.

Brief Report on the PSTIF

Ms. Eighmey briefly reviewed the Fund's finances and noted the Board of Trustees will receive reports from its actuary and auditor at its November 18 meeting.

Proposed DNR UST Rule Changes and Schedule

Chairman Ayers said the primary purpose of the meeting was to review and discuss proposed changes to DNR's UST rules. Ms. Eighmey briefly reviewed events leading up to this discussion and explained that EPA's new federal rules, though final, are not in effect in Missouri; instead, DNR's current rules still govern UST operations. She said Missouri is required by EPA's new rules to reapply for "approval" of its state program by 2018 and, when it does, it will have to show its rules accomplish the same objectives as the federal rules; if Missouri cannot achieve that, the federal EPA rules would eventually become effective, raising the possibility that UST owners/operators could be subject to two sets of rules. In addition, as was demonstrated a few years earlier, if EPA is not satisfied with Missouri's progress implementing the federal rules, it could choose to withhold all or part of the federal funding provided to DNR for its UST program.

Members then reviewed the list of UST rules, noting which ones DNR is proposing to change; they also reviewed DNR's schedule for publishing the rule amendments. It was noted a formal comment period will occur in late summer of 2016.

Ryan Rowden asked whether SB142, enacted by the Missouri General Assembly in 2015, would affect this rulemaking process. Heather Peters responded she didn't think so; Ms. Eighmey promised to review that bill and provide additional information to the Committee.

There was discussion about whether EPA will review and "sign off" on DNR's draft rule changes or will let them be finalized, then object to them during the subsequent "state program approval" process. Heather Peters said EPA recognizes the timing of doing rule changes first, then requesting state program approval, is awkward and that states don't want to have to amend their rules twice; she said EPA has committed to reviewing the draft rule changes as they are developed and providing feedback during the rulemaking process.

Discussion then began on the proposed changes, using the guide in the meeting packets.

The first area discussed related to new rules about equipment. There was considerable discussion about the provisions scheduled to become effective on July 1, 2017, including requirements that new UST systems must be double-walled, that piping must be double-walled if more than 50% of it is replaced at an existing facility, that the interstice of all double-walled equipment must be tested, and that containment sumps must be monitored and/or tested.

Ms. Peters clarified the "50% criterion" applies to the piping connected to a single tank. A question was raised as to whether the two compartments of a single tank will be viewed as separate tanks when applying this requirement; Ms. Peters said that is the Department's intent but at present, the word "compartment" does not appear in the rules anywhere so the current draft may not be clear on this point. Brian Wiegert advocated for clarity on this point so equipment companies will know whether the 50% replacement rule applies to each tank or each compartment. Todd Burkhardt mentioned the equipment companies might recommend language for the rule to Ms. Peters; she welcomed the offer.

Questions were asked about when a dispenser replacement triggers the requirement to install under-dispenser containment, (UDC). Members pointed out dispensers are often hit by customers and replaced without "cutting concrete." Ms. Peters was receptive to writing the rule in such a way as to allow this to continue; she commented EPA's rules on this point are not entirely clear. Ms. Eighmey commented that, from a risk management standpoint, the PSTIF favors under-dispenser containments, but she understands the retailers' objections. Curtis Wall said when his inspectors are aware a dispenser has been damaged, depending on the severity of the damage, they sometimes require "cutting concrete" to repair or replace equipment that is below grade. He noted MDA doesn't always know when dispensers are being replaced, however. Donnie Greenwalt said his company doesn't notify MDA of dispenser hits; rather, they contact their equipment vendor and expect the equipment company to know what has to be done. He said he supports Ms. Peters' proposed rule language. David Mangelsdorf noted it's

difficult to get customers' insurers to pay for repairs now; if the DNR also requires installation of UDC and replacement of subgrade equipment, retailers will likely need written statements from DNR to present to the customers' insurers to compel them to pay for it.

The discussion then moved to issues related to lined USTs and whether replacement of the UST should be required when the lining fails, as EPA's rules specify, or whether other options should be allowed, as proposed in DNR's current draft rules. Ms. Eighmey noted the PSTIF is not enthusiastic about allowing really old tanks to remain in the ground past their useful life, but does not want arbitrary deadlines forcing removal of equipment that is still useable. Ms. Peters explained the method for determining the thickness of the steel shell and said if the test shows the shell has retained at least 85% of its original thickness, the draft rules would allow keeping the tank in use after repairing or replacing the lining; if the shell is between 75-85%, cathodic protection would have to be added; and if the shell is below 75% of its original thickness, the only option would be to install a "tank within a tank" that doesn't rely on the original shell at all. She noted UL standards would be used as the basis for the rule. Sonny Underwood cautioned against relying on UL standards to set regulatory standards and said there's little history available yet on the performance of the "tank within a tank" technology. Jason Smith noted one consequence of allowing old, lined tanks to remain in the ground is that claims to PSTIF to clean up "legacy pollution" at old sites would be postponed. Chairman Ayers opined that, if a steel shell has retained 85% of its original thickness, the owner should not be forced to remove it. Others noted PSTIF could simply maintain high reserves for these sites.

Discussion then moved to the proposed ban on groundwater monitoring and vapor monitoring. Ms. Eighmey said EPA initially proposed banning these leak detection methods but the final federal rules instead require re-certifying that the wells are properly located and installed. Ms. Peters said few Missouri UST owners are still using these methods and she doubts their current well fields would meet EPA's rules, so she favors the simpler approach of setting a distant deadline by which these owners must switch to a different leak detection method. She said she plans to contact affected owners about this proposal.

The Committee then briefly reviewed and discussed proposed changes to the rule regarding Statistical Inventory Reconciliation (SIR) as a leak detection method and Automatic Tank Gauge, (ATG), alarms. She said DNR regulations already require owners/operators to promptly investigate every alarm, but only require notice to DNR if their investigation indicates a release may have occurred.

New testing requirements were reviewed and discussed next. There was considerable discussion about the requirement to test sumps, including questions about what must be done with the water used for a hydrostatic test. Ms. Peters said she anticipates owners or equipment companies will have the option of retaining and reusing the water for multiple sump tests. There were questions about whether testing is required if the sump has a sensor installed; Sonny

Underwood said Illinois does not require testing in these cases, and Ms. Peters said she would follow up on that possibility.

Ron Leone asked if the testing requirements apply only to new equipment; Ms. Peters pointed out some of the testing requirements apply to all equipment, such as the requirements to test overfill prevention devices and leak detection equipment. Ron Morton asked what it costs to test an ATG; it was suggested the DNR needs to know what the fiscal impact of the proposed new rules will be. Sonny Underwood pointed out some ATGs have a “self-testing” capability programmed into their software and it’s not clear whether this will meet the new regulatory requirement.

[After a brief recess for lunch, discussion continued.]

Brian Wiegert reported California has already imposed many of these equipment testing requirements and its top UST regulator recently reported 50% of all existing equipment fails the first time it’s tested. He suggested other states are planning to conduct inspections more frequently than required by EPA as an alternative to imposing some of EPA’s testing requirements. Ms. Peters said she is uncertain whether EPA would approve that approach.

The discussion then turned to the new requirements for monthly and annual inspections by UST owners/operators. Ms. Eighmey noted it’s one thing to require owners/operators to do things, but it’s an entirely different matter to consider how they will be required to document they’ve done them. She noted the PSTIF checks compliance for most of Missouri’s UST systems during annual policy renewal, and this has made Missouri’s enforcement of UST rules far more consistent, thorough, and frequent than in most other states. Ms. Peters concurred that a reasonable approach to checking records is needed. Ms. Eighmey suggested the PSTIF will consider changes to its traditional underwriting process, such as focusing on problem areas or on owners who have demonstrated an inability or unwillingness to comply with the rules; she said she hopes EPA will be receptive to allowing states to “triage” resources.

The Committee then reviewed and discussed various proposed changes to notification and record keeping requirements. Differing views were expressed regarding the proposal to notify DNR before piping is replaced; it was noted DNR is already being notified most of the time when this is done.

Ms. Eighmey and Ms. Peters both encouraged continued dialogue and invited those present to send any subsequent questions or concerns to one of them.

Chairman Ayers thanked everyone for participating in the discussion.

Proposed New MDA Rules – Dispenser Labeling, CNG, and LNG

Curtis Wall reviewed the information provided to the committee; he reported there are seven CNG facilities in the state now but they are not being regularly inspected by MDA; he is unaware of any LNG facilities in Missouri at this time.

John Bell gave a presentation on off-spec lube oil and antifreeze products that MDA had discovered being sold in Missouri stores; he summarized MDA's inspection and enforcement efforts and invited reports any time someone believes a fake product is being sold. A member asked how many businesses in Missouri offer oil change service; he estimated 8,000.

Ryan Rowden thanked the MDA and AGO for their diligence in assuring those who market fake or off-spec products are caught and prosecuted.

Regarding rules, Curtis Wall reported MDA plans to draft a dispenser labeling rule by November 1. MDA estimates there are still about 110 tanks in service that were built to be USTs but have been modified to serve as ASTs; Mr. Wall said MDA has no immediate plans to set a deadline for removing these from service; similarly, MDA's plan to amend its rules to require ASTs to be painted a light color has been postponed.

DNR Plans for a Web-Based Map of Tank Sites

Don Cripe was introduced; he updated the Committee on plans to add tank sites to DNR's online mapping software. Ms. Eighmey complimented Mr. Cripe on several revisions he had made to the software that better reflect the terminology and facts relevant for tank sites. She suggested it may be inappropriate to include AST sites, since the DNR's database of AST sites is incomplete and users might be misled into thinking the map contains them all.

Chairman Ayers thanked Mr. Cripe for his presentation. He announced those from the St. Louis area were invited to stay for a follow-up discussion with DNR's Air Pollution Control Program staff about its rule governing gas dispensing facilities in the St. Louis non-attainment area.

There being no other business, Chairman Ayers asked for a motion to adjourn the meeting. Ryan Rowden so moved; Paul Cox seconded. Motion carried.

Chairman Ayers adjourned the meeting at 1:53 p.m.

Respectfully submitted:

 /S/
Carol R. Eighmey

 6/14/2016
Date