

**MINUTES**  
**Petroleum Storage Tank Insurance Fund**  
**Board of Trustees Meeting**  
**May 17, 2017**

**Doubletree Hotel, Capitol View Room, Jefferson City, MO**  
**Start Time: 9:30 a.m.**

Chairman McNutt called the meeting to order. He introduced Dru Buntin, representing the Department of Natural Resources in place of Katie Jo Wheeler, and Assistant Attorney General Daryl Hylton, attending in place of Craig Jacobs, who was recently appointed to serve as counsel to the Board.

**Trustees Present:**

Don McNutt, Outgoing Chairman  
James Greer, Incoming Chairman  
Jim Ford, Vice Chairman  
John Albert  
Dru Buntin (for Katie Jo Wheeler)  
Tom Kolb  
Ski Mariea  
Kristen Paulsmeyer  
Tom Pfeiffer

**Absent:**

Danny Opie

**Staff and Attorneys Present:**

Brian Allard, Attorney General's Office  
Jeff Blaylock, Ford, Parshall & Baker  
Carol R. Eighmey, Executive Director  
Dan Henry, Williams & Company Consulting  
Daryl Hylton, Attorney General's Office  
Diane James, Executive Assistant  
Jim Layton, Tueth, Keeney, Cooper, Mohan & Jackstadt  
Patrick J. Vuchetich, Williams & Company Consulting  
David Walters, Williams & Company Consulting

**Others Present:**

Daryl Bowles, DK Environmental  
Ken Koon, Tanks Section, Hazardous Waste Program, DNR  
Dave Lawson, Owner, Lawson's Finish Line  
Angie McMichael, Hazardous Waste Program, DNR  
Heather Peters, Compliance/Enforcement Section, Hazardous Waste Program, DNR

### **Election of Officers**

Chairman McNutt opened the floor for nominations for chairman. Ski Mariea moved to nominate James Greer. Chairman McNutt asked if there were any other nominations. There being none, he recognized James Greer as chairman by acclamation and thanked him for his willingness to serve.

Chairman McNutt then invited nominations for vice chairman. Tom Pfeiffer moved to nominate Jim Ford. The Chairman invited other nominations. There being none, he recognized Jim Ford as vice chairman by acclamation and thanked him for his willingness to continue serving.

Mr. McNutt said it had been a privilege to serve as chairman and expressed his appreciation to everyone for their support and assistance, particularly complimenting Carol Eighmey.

Ms. Eighmey similarly thanked Mr. McNutt, noting he served as Chairman for twelve years; she reviewed the Board's accomplishments during his tenure.

Mr. McNutt then turned the gavel over to Mr. Greer.

### **Claim Appeals**

*Wood Oil, Albany, Claim 63076* – No one representing Wood Oil was in attendance. Pat Vuchetich noted Williams' recommendation was provided in the Trustees' materials. After inviting questions from the Trustees, Chairman Greer announced the Board would make a decision on the appeal later that day in closed session.

*Lawson's Quick Shop, Stewartsville, Claim 51526* – Chairman Greer invited Dave Lawson and Daryl Bowles to the table to discuss this appeal. Mr. Bowles reviewed the history of the site and explained how recently obtained data resolved the question of whether the source of impact was the old USTs or the newer AST.

Pat Vuchetich agreed with Mr. Bowles' conclusion and noted the recent information had been provided beyond the 180-day period during which Williams & Company can consider an appeal.

Trustees asked several questions about the location of the tanks, whether the station across the street was a possible source, and the city's plans to install new water lines.

Chairman Greer thanked Messrs. Lawson and Bowles for attending and said the Trustees would make a decision later that day in closed session. Messrs. Lawson and Bowles thanked the Trustees for their time.

### **Review and Approval of Minutes – March 23, 2017 – Open Session Meeting**

Ski Mariea moved that the minutes from the March 23, 2017, Board meeting be approved. Jim Ford seconded. A correction was made on page 2 under Legislative Report, replacing the

reference to HB 483 with HB 206. With that correction, the motion carried with Tom Pfeiffer abstaining.

### **Monthly Reports**

The financial statements, monthly activity reports, and large-loss claims reports were reviewed.

### **Legislative Report**

Chairman Greer observed there were interesting developments at the end of the legislative session and directed Trustees' attention to the revised legislative report distributed at the meeting. He asked Ms. Eighmey to summarize it.

She said several bills of interest are awaiting action from the Governor, including HCB 3, which would authorize OA to sweep unexpended balances from special fee funds any time during FY18 to provide money for the Senior Services Protection Fund. Tom Kolb asked what "unexpended balances" means, noting the PSTIF has a cash balance but not any "excess cash." Ms. Paulsmeyer said OA was still reviewing the legislation. It was noted certain fee funds were exempted in the legislation. Mr. Kolb asked Mr. Buntin whether MoDNR is concerned about the effect of the legislation on the Department's fee funds; he responded the Department is also still analyzing the bill and agreed there are questions about what is meant by "unexpended balances."

Ms. Eighmey inquired of Mr. Albert whether the Department of Agriculture had increased its petroleum inspection fee; he said it had, and MDA is also analyzing HCB 3.

Ms. Eighmey said she would ask one of the Board's attorneys to analyze whether HB 153 or SS SCS HCS HBs 339 & 714 would have an effect on the Trustees' operations.

### **Changes to Underwriting Procedures and Forms**

Chairman Greer turned Trustees' attention to the report and recommendations in their notebooks and said a separate discussion and vote will occur on each of the seven recommendations.

*RECOMMENDATION 1 – If notified that an insured tank owner has added a tank at an insured site, issue an endorsement to add the new tank to the participation agreement and charge a pro-rata participation fee for the additional tank.* Ms. Eighmey reviewed this, noting the Board had never addressed this situation in its rules nor given any directive to its staff.

Jim Ford moved to approve this recommendation. Tom Pfeiffer seconded. Discussion followed, during which Ski Mariea suggested the Trustees might want to allow a "30-day grace period," as some auto insurers do. It was agreed staff would review this suggestion and provide a more explicit written policy for the Trustees' review, so the motion was withdrawn.

*RECOMMENDATION 2 – Deny coverage for a recently-added tank if an insured fails to notify us that he/she has added or replaced a tank and makes a claim for that tank.* Ms. Eighmey suggested this recommendation also be tabled, since it is related to #1.

*RECOMMENDATION 3 – Require all operating petroleum storage tanks at a site to be insured by the PSTIF or none can be.* Ms. Eighmey reported the Advisory Committee supports this recommendation, and it is typical of how commercial insurers underwrite pollution liability insurance for tanks.

Tom Pfeiffer moved to approve Recommendation 3. Ski Mariea seconded. It was noted this would reduce the chance for disputes when a claim is made. Motion carried.

*RECOMMENDATION 4 – Require proof that owners who use automatic tank gauges for leak detection are also using the device to maintain inventory records.* Ms. Eighmey said this idea had surfaced due to concerns expressed by Trustees in previous meetings, but it is still “in the idea stage.” She invited opinions from Trustees, noting staff still have some work to do on how this could be implemented without creating an unnecessary paperwork burden.

Discussion followed. Tom Kolb observed it might have to be limited to UST owners, as it is very difficult to maintain accurate inventory records for ASTs; Mr. Albert concurred. Don McNutt inquired whether owners should be allowed to use other methods for maintaining inventory records and expressed concern about mandating their ATG be used. Ms. Eighmey agreed, noting the idea is to incentivize owners to monitor their inventory in some manner, not specify what method they must use. Tom Pfeiffer asked how much variance in inventory is considered evidence of a leak. James Greer said some variance in daily figures is expected and one has to observe trends over time. Heather Peters noted MoDNR’s rules state if two consecutive months’ data shows a loss trend, it is to be considered a suspected leak. After discussion, it was agreed staff would continue working on this.

*RECOMMENDATION 5 – Only require documentation the named insured can meet the deductible every third year, instead of every year. (Would apply to both USTs and ASTs.)* Ms. Eighmey said this would reduce paperwork for tank owners but staff does not think it would have any negative consequences.

Don McNutt moved to approve Recommendation 5. Jim Ford seconded. After a brief discussion, the motion carried.

*RECOMMENDATION 6 – Offer a new “short form” application for use when PSTIF-insured tanks are sold and the new owner also wants PSTIF coverage.* Ms. Eighmey recommended approval of two new forms provided in the meeting materials; she said the Advisory Committee had reviewed them and they would streamline the process of obtaining insurance for buyers who purchase PSTIF-insured sites.

Tom Pfeiffer moved to approve the two new forms; John Albert seconded. Motion carried.

*RECOMMENDATION 7 – Revise the UST application form used to initially apply for coverage (for use after 7/1/17).* Ms. Eighmey briefly explained the new form is needed as a result of MoDNR's new UST rules and said the Advisory Committee had reviewed this one also.

Tom Kolb moved to approve the new UST insurance application form; Jim Ford seconded. After clarification that an owner with both types of tanks at a site would complete both Section A and Section B, the motion carried.

Chairman Greer then noted discussions are ongoing about additional changes to underwriting procedures and other recommendations may be presented in future meetings.

### **Rules Review Report for JCAR**

Chairman Greer reminded the Trustees a new law requires every rulemaking body in Missouri state government to review its rules once every five years. He said the Secretary of State published a notice in July 2016 inviting comments on the PSTIF Board's rules, and the Board must file a report with the legislature by June 30, summarizing comments received and its own review of its rules. He invited Ms. Eighmey to review the draft report, which she did.

*[Jeff Blaylock and Jim Layton arrived.]*

Tom Pfeiffer moved to approve the report for submittal to the Joint Committee on Administrative Rules; Ski Mariea seconded. Motion carried.

### **Proposed Software Projects**

Chairman Greer presented the staff recommendation to spend up to \$32,500 modifying the Board's software to incorporate MoDNR's new rules and to include the new insurance application forms. Jim Ford moved to approve the expenditure; Tom Pfeiffer seconded. Motion carried.

Ms. Eighmey mentioned an idea had surfaced about creating a software program to assist tank owners in preparing various forms required by state agencies; she asked the Board whether they were interested in staff pursuing it. The Trustees expressed support for the concept; Ms. Eighmey agreed to investigate it further.

### **Plans Related to 12/31/2017 Liability Shift**

Chairman Greer asked Trustees to review the plan contained in their meeting materials related to the liability shift that will occur the end of 2017. He noted the plan is focused on informing people what the law says, noting it will be MoDNR's responsibility to determine how to enforce the law.

Ms. Eighmey explained what properties are affected by the change and noted the proposed letters will be very site-specific.

Don McNutt asked a question to clarify this provision only applies to “remedial claims” and has no effect on sites where tanks are or have recently been insured.

Dru Buntin said MoDNR supports the plan and the Department is considering what actions it will take; he and Ken Koon said they would let the Board know what MoDNR’s plans are.

Mr. Ford then moved to approve the plan as presented; Tom Pfeiffer seconded. Motion carried.

**Administrative Issues**

*Appointment to Advisory Committee* – John Albert moved to appoint Brian Wiegert of PMMIC, an insurance company that writes pollution liability coverage for tank owners in Iowa, Arizona, Kansas, New Mexico, and Wisconsin, to serve as an “insurer” representative on the Advisory Committee. Tom Kolb seconded. Motion carried.

*[Brian Allard arrived at the meeting.]*

*Billings* – Chairman Greer invited questions about the billings; there were none.

Chairman Greer thanked those in attendance for coming; he said the next Board Meeting had tentatively been scheduled for July 26 but the date may change.

He then asked the Board to go into closed session to:

- Approve the minutes from its closed meeting on March 23;
- Make decisions on the claim appeals heard this morning;
- Discuss ongoing and threatened litigation; and
- Discuss matters relating to contracts.

Jim Ford moved that the Board go into closed session to discuss the matters identified by the Chairman, as authorized by Section 610.021, RSMo. Tom Pfeiffer seconded. A roll call vote was taken; motion carried without dissent.

Chairman Greer adjourned the open session meeting at 11:13 a.m.

Respectfully submitted:

Approved by:

S/  
Carol R. Eighmey

S/  
James Greer, Chairman

8/2/17  
Date