

**Minutes of PSTIF Advisory Committee Meeting
October 5, 2017**

Chairman Jordan called the meeting to order at 10:30 a.m. and invited everyone present to introduce themselves.

Members Present:

Mark Jordan, Wallis Oil Co., CHAIRMAN
Sonny Underwood, Mid-South Steel Products, Inc., VICE CHAIRMAN
Steve Ayers, Ayers Oil Co.
Gary Bemboom, Bemboom Enterprises d/b/a BeeLine Snack Shops
Paul Cox, Cox Oil Co.
Dan Creek (for Tracy Barth), MFA Petroleum 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
Cathy Raterman (for Wayne Baker), Warrenton Oil Co.
Jason Smith, Environmental Works, Inc.
Curtis Wall, MDA/Weights, Measures, and Consumer Protection Division
Brian Wiegert, PMMIC Insurance/Rounds & Associates

Members Absent:

Mark Abel, Abel Oil Co.
Ron Bachman, St. Joe Petroleum
Bruce Barnes, Santie Oil Co.
Daryl Bowles, DK Environmental, LLC
Todd Burkhardt, Neumayer Equipment Co.
Phil Farrell, Double Check Co.
Zarar "Bobby" Lodhi, Lion Petroleum
Stewart McIntyre, Big River Oil
Ryan Rowden, Missouri Petroleum Council
Jack Sachs, Hocker Oil Co.
Adam Troutwine, Polsinelli

Staff Present:

Carol R. Eighmey, Executive Director, PSTIF
Dan Henry, PSTIF Claims Supervisor
Craig Jacobs, Assistant Attorney General and PSTIF Board Counsel
Diane James, PSTIF Executive Assistant
Dorcee Lauen, PSTIF Compliance/Underwriting Manager
David Walters, PSTIF Claims Manager

Others Present:

John Albert, MDA Weights, Measures, and Consumer Protection Division
Donnie Greenwalt, Wallis Oil Co.
Scott Hayes, U.S. EPA, Region 7
David Kirby, Superior Equipment Co.
Rob Lauter, Superior Equipment Co.
David Pate, Industrial and Petroleum Environmental Services (IPES)
Bennett Schwartz, OPW Retail Fueling
Don Willloh, Assistant General Counsel, MO Department of Natural Resources

“No MO Red Tape” – Public Hearing on PSTIF Rules and Procedures

Chairman Jordan briefly explained Governor Greitens’ executive order on reducing red tape and noted the PSTIF Board of Trustees had held a public hearing in conjunction with its August meeting. He then opened the public hearing and invited comments from those present.

David Pate, an environmental consultant, suggested allowing submittal of environmental reports and reimbursement requests in electronic format.

There were no other comments offered. Chairman Jordan reminded all present that written comments are also invited and will be accepted until November 1, then closed the hearing. Ms. Eighmey reviewed the tentative schedule for amending the Board’s rules.

Review/Approval of Minutes – March 21, 2017 Meeting

Curtis Wall moved that the minutes be approved. Steve Ayers seconded. Motion carried.

Report on Recent Procedural Changes Related to Coverage Applications

Chairman Jordan noted most of the items listed in the meeting packet should sound familiar, as they had been discussed at previous Advisory Committee meetings. He then went through the following items, summarizing each and allowing opportunity for discussion or questions:

- Communications with owners of pre-1981 fiberglass USTs;
- Formal Board policy when a new tank is installed at an insured site;
- Streamlined insurance application forms for use when a PSTIF-insured site is purchased;
- Fillable pdf forms on the PSTIF website;
- Changing the requirement to document ability to pay the deductible from annually to once every three years;

- Plans regarding Operator Training Certification form;
- Elimination of PSTIF paperwork requirements related to new UST installations, (since the MoDNR is now checking that paperwork or observing those equipment tests); and
- Streamlining of the MoDNR's UST registration form.

There were few comments or questions. Dorcee Lauen confirmed that she and her staff are no longer requiring documentation demonstrating ability to pay the deductible annually. There was a brief discussion about the Department of Natural Resources' installation inspections; Heather Peters explained the recent changes and noted if the inspector observes certain tests after new equipment is installed, no paperwork will be required at all. Chairman Jordan highlighted the Department's streamlined registration form, noting it is again a two-page document, as it had been in the 1990's.

Review of Possible Future Procedural Changes

Chairman Jordan asked Ms. Eighmey to review decisions yet to be made on how PSTIF staff will implement the MoDNR's new UST rules. Ms. Eighmey noted the Board's longstanding tenet had been to do a thorough annual compliance review, but not to unfairly burden PSTIF-insured owners/operators beyond what is required of non-PSTIF-insured owners/operators or beyond what is reasonable and prudent. She noted the new UST rules, triggered by EPA's 2015 rulemaking, create significant new testing and inspection requirements, which in turn create significant new paperwork burdens for owners and operators.

She noted that, while EPA expects states to do a complete compliance review on every UST every three years, it is not yet clear what resources EPA will make available to the states to accomplish that, nor what resources Governor Greitens and Director Comer will dedicate to that task.

Ms. Eighmey then invited discussion on how robust PSTIF staff review of paperwork should be for new USTs installed after July 1, 2017, once the owners' PSTIF coverage has been in effect for a year and must be renewed. It was noted this equipment will all be brand new and will have been thoroughly inspected and tested at installation, so the risk of leaks should be relatively small for a few years. Donnie Greenwalt asked what DNR will do if the PSTIF doesn't review the paperwork, emphasizing he does not want to provide records to two different agencies.

Heather Peters suggested it would be appropriate to postpone review of paperwork for three years, noting that is the minimum required by EPA and is the frequency at which the Department plans to review paperwork for non-PSTIF-insured sites. She noted there might be an issue related to leak detection records, since the Department is expected to review twelve months' of leak detection

records every three years, while the PSTIF has required six months' every year; the Department has considered the two approaches to be equivalent in the past.

Ms. Eighmey asked Scott Hayes if he had any comments on this topic; he did not.

Jason Smith asked whether the Department will subject non-PSTIF-insured owners/operators to the same requirements and level of scrutiny as PSTIF staff will to their insureds. Ms. Peters and Ms. Eighmey affirmed they are committed to maintaining the traditional agreement between their agencies that owners/operators will not be required to submit records to two agencies, and that they will strive for consistency. Ms. Peters noted this agreement, however, depends to some extent on a commitment by the PSTIF to continue meeting the minimum review criteria expected by EPA. Ms. Lauen noted the Board's responsibility is to spend its resources on things that mitigate risks, and since the equipment at these sites will be brand new and state-of-the-art, it may not be worthwhile to check every little detail until five or ten years after installation, when the age of the equipment will become a higher risk factor. Ms. Eighmey reiterated it is not yet known whether state regulatory agencies will have the resources to require and review every required record for every UST site every three years, suggesting regulators may also have to prioritize their efforts. Chairman Jordan agreed it may not be necessary for paperwork reviews to be as thorough for the first few years after new double-walled USTs are installed.

It was estimated about 60 new UST systems will likely be installed between July 1, 2017 and July 1, 2018. Ms. Eighmey noted this is a small number compared to the ~2500 sites insured by the PSTIF. She then asked the Committee to contemplate how the new paperwork requirements should be administered for the ~2500 existing sites that will be subject to the new UST rules in 2020, noting this is a significantly larger question.

Chairman Jordan opined many of those tank owners still don't know or understand what the new requirements will mean for their operations and costs. Ken Koon noted the small number of new leaks at PSTIF-insured sites demonstrates the Board's past practices have been effective at mitigating risks and agreed the Board's decisions should be aimed at maintaining that positive record. Heather Peters mentioned EPA will soon issue a new guidance document on what constitutes "significant operational compliance," which will set a baseline for what is expected by EPA when states evaluate UST compliance. She reaffirmed it works well when the PSTIF and the Department share information, as that avoids duplicative demands on tank owners.

Chairman Jordan observed one drawback of the new UST rules is that they impose higher demands on new equipment, which serves as a disincentive for owners of old equipment to replace it; he noted this will, over time, increase the Board's risks, regardless of what decisions are made about requiring and reviewing paperwork.

It was noted the cost of implementing the new UST rules in 2019-2020 for owners of existing UST sites will likely be higher than estimated by the EPA, as many of the requirements to test equipment will necessitate equipment replacement.

Review of Proposed PSTIF Rule Amendments

Chairman Jordan said he would use the list of proposed rule changes in their packets as a discussion guide. He then read each item and asked if there were questions or comments. For most, there were none.

There was a brief discussion on Item 2; Ms. Eighmey said legal counsel had recommended adding a definition for “contamination,” but it is not intended to change any current procedures or practices. Ken Koon said the Department is analyzing this change and may have comments; he opined the MoDNR should be the agency to define the word and there may be concerns about inclusion of the phrase “representative concentrations.” Ms. Eighmey responded the intent is to use the concepts contained in the MoDNR’s rules and RBCA Guidance, but welcomed the opportunity for further discussion with the Department on this item.

Regarding Item 7, Ms. Peters reiterated that if the rule change results in PSTIF staff requiring submittal of fewer than six months’ leak detection records, the Department may have concerns about whether that satisfies EPA’s expectations. Ms. Eighmey noted the proposed rule change doesn’t compel the Board to reduce its paperwork demand; rather, it allows flexibility in the event the Board decides to do so in the future or the EPA agrees to allow states to review fewer ATG printouts to assure compliance with leak detection rules.

Ms. Eighmey specifically asked for feedback on Item 8, since it is a proposed fee increase. There were comments and questions about why \$200 was proposed and whether the actuary believes the increase is justified. Ms. Eighmey said the amount is not based on an actuarial analysis, reminding members the participation fees are not actuarially-based.

Regarding Item 22, the proposed change to the Operator Training Rule, Ms. Peters agreed to provide feedback from the MoDNR by the end of October.

Ms. Eighmey reiterated additional questions or comments were welcome and encouraged all to provide them by the end of October. She said she would soon request approval from Governor Greitens’ office to proceed with the rulemaking, noting if that approval is granted, she plans to present the proposed amendments to the PSTIF Board of Trustees at their November 29th meeting. She reminded members that the Board’s publication in the *Missouri Register* will trigger another public comment period, so there will be another opportunity to review and comment then.

Ken Koon asked a few additional questions about the language in the rules. He indicated the Department may have a concern with removal of the words “or not,” but had not had time to come to a conclusion on that yet. Ms. Eighmey said that change is simply a grammatical correction and then reiterated her desire to work out any concerns the Department has before the rules are presented to the Board.

Ms. Eighmey then distributed language from state law regarding the Board’s authority to require a site assessment before insuring an applicant. She said at the Committee’s last meeting, she had mistakenly indicated the Board could impose this requirement on an owner who, for example, self-insures for many years, then gets insured by the PSTIF right before removing his tanks.

A brief discussion followed; it was noted though the practice seems a bit unfair, an owner like that is paying the transport load fee as part of the price of his fuel, as all tank owners do. The greater concern which prompted the language to be added to the statute years ago was owners who had no financial responsibility mechanism in place at all and operated for years without one, then applied for PSTIF coverage. Ms. Eighmey noted that since the MoDNR has been more diligent enforcing its FR rule, this is not as much of a concern today as it was in the past.

There was a general consensus that adding a rule to implement this statutory provision is not a high priority at this time.

FY17 Actuarial Report and Discussion of Possible Increase in Transport Load Fee

Chairman Jordan observed the information provided in the meeting packet confirms expenditures from the Trust Fund have exceeded revenues for the last several years, reminding members of prior discussions on that. He noted the actuary concluded current revenues and cash reserves will not be sufficient to pay runout claims after the sunset date and asked the Committee for its thoughts on the matter.

David Mangelsdorf made a motion that the Committee recommend the Board of Trustees raise the transport load fee to a level sufficient to meet the Trust Fund’s projected financial obligations. Steve Ayers seconded. A brief discussion followed, during which the risk of money being “swept” out of the Trust Fund and the possibility of extending the sunset date were discussed. The motion then carried unanimously by voice vote of all who voted.

FR and the Private Insurance Market

Chairman Jordan took up the last agenda item, a report on FR and private insurance. Carol Eighmey briefly summarized the variety of approaches taken in the fifty states and recent information about the private insurance market, encouraging the Committee to think about what is best for Missouri and Missourians.

