

Oversight Division

Committee On Legislative Research

Program Evaluation: Petroleum Storage Tank Insurance Fund

Program Evaluation: Petroleum Storage Tank Insurance Fund

*Prepared for the Committee on Legislative Research
by the Oversight Division*

Jeanne Jarrett, CPA, Director

Evaluation Team:

Julie Miller, CPA, Team Leader; Kathy Frese, CPA; Alicia Kolb

February, 2000

TABLE OF CONTENTS

COMMITTEE ON LEGISLATIVE RESEARCH	ii
LETTER OF TRANSMITTAL	iii
EXECUTIVE SUMMARY	page iv
CHAPTER ONE - INTRODUCTION	page 1
CHAPTER TWO - CLAIMS	page 5
CHAPTER THREE - INSPECTIONS	page 7
CHAPTER FOUR - DATABASE	page 8
CHAPTER FIVE - MONITORING	page 9
CHAPTER SIX - PERSONAL SERVICES	page 10

COMMITTEE ON LEGISLATIVE RESEARCH

OVERSIGHT SUBCOMMITTEE

THE COMMITTEE ON LEGISLATIVE RESEARCH, Oversight Division, is an agency of the Missouri General Assembly as established in Chapter 23 of the Revised Statutes of Missouri. The programs and activities of the State of Missouri cost approximately \$16 billion annually. Each year the General Assembly enacts laws which add to, delete or change these programs. To meet the demands for more responsive and cost effective state government, legislators need to receive information regarding the status of the programs which they have created and the expenditure of funds which they have authorized. The work of the Oversight Division provides the General Assembly with a means to evaluate state agencies and state programs.

THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

PROJECTS ARE ASSIGNED to the Oversight Division pursuant to a duly adopted concurrent resolution of the General Assembly or pursuant to a resolution adopted by the Committee on Legislative Research. Legislators or committees may make their requests for program or management evaluations through the Chairman of the Committee on Legislative Research or any other member of the Committee.

COMMITTEE ON LEGISLATIVE RESEARCH

Representatives:

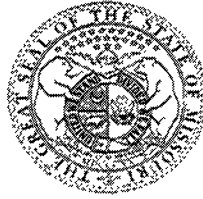
Representative Robert M. Clayton III, Chairman
Representative Richard Franklin
Representative Don Koller
Representative Kenneth Legan
Representative Emmy McClelland
Representative Randall Relford
Representative Delbert Scott
Representative O.L. Shelton
Representative Merrill Townley
Representative Tim VanZandt

Senators:

Senator Harry Wiggins, Vice Chairman
Senator Roseann Bentley
Senator Harold Caskey
Senator Doyle Childers
Senator Ronnie DePasco
Senator Franc Flotron
Senator Wayne Goode
Senator Walt Mueller
Senator Larry Rohrbach
Senator Stephen Stoll

REPRESENTATIVES:
ROBERT M. CLAYTON III
Chairman
RICHARD FRANKLIN
DON KOLLER
KENNETH LEGAN
EMMY McCLELLAND
RANDALL H. RELFORD
DELBERT SCOTT
O.L. SHELTON
MERRILL TOWNLEY
TIM VAN ZANDT

STATE OF MISSOURI



SENATORS:
HARRY WIGGINS
Vice Chairman
ROSEANN BENTLEY
HAROLD CASKEY
DOYLE CHILDERS
RONNIE DePASCO
FRANCIS FLOTRON
WAYNE GOODE
WALT MUELLER
LARRY ROHRBACH
STEPHEN STOLL

COMMITTEE ON LEGISLATIVE RESEARCH

STATE CAPITOL
JEFFERSON CITY, MISSOURI 65101-6806

February, 2000

Members of the General Assembly:

The Joint Committee on Legislative Research adopted a resolution in June, 1999, directing the Oversight Division to perform a program evaluation of the Missouri Department of Natural Resources which included the examination of records and procedures of the Petroleum Storage Tank Insurance Fund to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The accompanying report includes Oversight's comments on internal controls, compliance with legal requirements, management practices, program performance and related areas. We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III".

Representative Robert M. Clayton III
Chairman

EXECUTIVE SUMMARY

The Petroleum Storage Tank Insurance Fund, formerly the Underground Storage Tank Insurance Fund, was created by statute in 1989. Petroleum storage tank owners or operators are required to maintain evidence of financial responsibility sufficient to take corrective action and compensate third parties for bodily injury and property damage caused by storage tank releases. Any owner of petroleum storage tanks may elect to participate in the fund to partially meet the financial responsibility requirements established by law. The Petroleum Storage Tank Insurance Fund (PSTIF) is essentially an insurance program for petroleum storage tanks in the state. It provides coverage for the cleanup of contamination caused by releases from petroleum storage tanks. The average cost of a cleanup is \$50,000, with \$10,000 being paid by the claimant as a deductible amount. However, cleanup costs of individual sites vary widely based on the extent of contamination and the type of cleanup required. The program is funded predominately by a fee of \$25.00 per transport load (8,000 gallons) of fuel sold in the state, although fees are also collected on the tanks insured. Collection of the transport load fee totals approximately \$13.5 million annually. As of September, 1999, approximately 2,900 policies were in force, which insured 9,050 tanks. Those participating in the program must comply with state and federal regulations and must submit evidence of financial responsibility requirements.

Owners of tanks which are to be cleaned up contract for the cleanup costs themselves and subsequently submit claims for reimbursement of the costs. Owners are also permitted to clean up their own sites. Oversight noted the PSTIF Board does not require tank owners to obtain bids for the cleanup and site characterization work which is submitted for reimbursement. DNR had a regulation which required bids, but the Board did not enforce it. Oversight recommends the regulation be enforced in order to promote a competitive atmosphere among contractors and environmental consulting firms. Tank owners have limited financial incentive to contain cleanup costs, since they are only liable for the first \$10,000 of cleanup costs. Cleanup costs can range from \$1,000 to \$1,000,000 per site.

Even though the PSTIF has not required the cleanup of petroleum storage tanks to be bid out, they have required budgets for costs to be submitted and approved prior to the cleanup work being performed. Failure to obtain approval of the budgeted cleanup costs is supposed to subject the fund participant or fund beneficiary to a reduction or denial of benefits. Oversight's review of the claim files indicated the adjuster at the site made the owner aware of this policy and warned that additional costs may not be covered by the Fund. However, in some cases the costs were paid anyway.

Oversight's review of tank owner registration files noted many sites that had not been inspected by the Department of Natural Resources in the last five years and several that had never been inspected. By regulation, petroleum storage tank systems must provide release protection for tanks and piping. Site owners must maintain documentation of monitoring performed for all tanks and piping, but are not required to submit evidence of the monitoring. Without performing

site inspections, DNR has no assurance that these systems are in compliance with regulations. Oversight recommends underground storage tank sites be inspected on a regular basis to ensure compliance with regulations.

Oversight noticed areas where the Petroleum Storage Tank Insurance Fund and the Department of Natural Resources could improve communication and coordination in carrying out the administrative duties related to the program. After the Board was created it appears some of the functions were transferred from the DNR to the Board, yet DNR failed to transfer nine full time equivalent positions (FTE) to the Board. Apparently those positions were reassigned to other duties within the department.

To provide greater accountability, Oversight recommends regular audits be conducted of the third party administrator who was paid approximately \$2 million out of the fund for administering \$12.6 million in claims annually. Provision for audits of the entity are included in the current contract.

The Oversight Division did not audit departmental or fund financial statements and accordingly does not express an opinion on them. We acknowledge the cooperation and assistance of staff from the Department of Natural Resources and Petroleum Storage Tank Insurance Fund Board during the evaluation process.



Jeanne Jarrett, CPA

Director, Oversight Division

Chapter 1 - Introduction

Purpose

The General Assembly has provided by law that the Committee on Legislative Research may have access to and obtain information concerning the needs, organization, functioning, efficiency and financial status of any department of state government or of any institution that is supported in whole or in part by revenues of the State of Missouri. The General Assembly has further provided by law for the organization of an Oversight Division of the Committee on Legislative Research and, upon adoption of a resolution by the General Assembly or upon adoption of a resolution by the Committee on Legislative Research, for the Oversight Division to make investigations into legislative and governmental institutions of this state to aid the General Assembly.

The Committee on Legislative Research directed the Oversight Division to perform a program evaluation and expenditure review of the Petroleum Storage Tank Insurance Fund for the purpose of providing information to the General Assembly regarding proposed legislation and appropriation bills.

Background

Tank owners or operators are required to maintain evidence of financial responsibility sufficient to take corrective action and compensate third parties for bodily injury and property damage caused by underground storage tank releases. Financial responsibility may take the form of the following methods: cash trust fund, guarantee, insurance, surety or performance bond, letter of credit, qualification as a self-insurer, or any other satisfactory method.

The Petroleum Storage Tank Insurance Fund (PSTIF), formerly the Underground Storage Tank Insurance Fund, was created by section 319.129, RSMo, in 1989. Any owner or operator of petroleum storage tanks may elect to participate in the PSTIF to partially meet the financial responsibility requirements.

OVERSIGHT DIVISION
Petroleum Storage Tank Insurance Fund
Program Evaluation 1999

From 1991 to 1996 the Petroleum Storage Tank Insurance Fund was administered by the Department of Natural Resources (DNR). DNR contracted with a third party administrator (TPA) to perform administrative and insurance services and manage claims. The first insurance policy was issued in May, 1992. Since August 28, 1996, the Fund has been administered by a Board of Trustees, consisting of designees of the Office of Administration, Department of Natural Resources and Department of Agriculture. The Board of Trustees includes eight citizens appointed by the Governor, including owners or operators of retail petroleum storage tanks; representatives of a financial lending institution, insurance underwriting industry, and industrial or commercial users of petroleum; and two citizens with no petroleum-related business interest. The PSTIF Board has continued to contract with the third party administrator.

Underground tank owners are required to register the tanks with the Department of Natural Resources. DNR has established requirements for the closure of tanks, including notice prior to closure.

Tank owners seeking to participate in the PSTIF must submit an application to the Board and certify the petroleum tanks are in compliance with technical standards of the United States Environmental Protection Agency (EPA) and rules established by the Department of Natural Resources and Department of Agriculture. The applicant is required to submit proof that the applicant has reasonable assurance of the tank's integrity. The applicant must also submit evidence that they can meet the applicable financial responsibility requirements. Each participant in the PSTIF must pay an annual fee ranging from one hundred dollars to three hundred dollars, depending on the category of the tank. As of September, 1999, approximately 2,900 policies were in force, which insured approximately 9,050 tanks.

The PSTIF provides coverage for the cleanup of contamination caused by releases from petroleum storage tanks. HB 251, passed in 1995, allowed the Fund to cover cleanup costs from underground storage tanks participating in the Fund or which applied to the Fund by August 28, 1995, regardless of when the release occurred. The House Bill also began covering cleanup costs of releases from underground storage tanks taken out of use by August 28, 1995; reported to DNR by August 28, 1995; and with cleanup expenses

incurred after August 28, 1995.

After the passage of SB 708 in 1996, owners and operators of aboveground storage tanks became eligible to participate in the PSTIF beginning July 1, 1997. The Senate Bill also allowed the PSTIF to provide coverage for releases from storage tanks taken out of use prior to December 31, 1997, regardless of when the releases occurred, provided the sites had been documented by or reported to the DNR prior to December 31, 1997. The owner or operator making a claim is liable for the first ten thousand dollars of the cleanup costs. The PSTIF assumes all eligible cleanup costs greater than ten thousand dollars but less than one million dollars per occurrence or two million dollars in the aggregate per year. The PSTIF provides coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks. The PSTIF also provides the defense of eligible third-party claims. The average cost of a cleanup is \$50,000, including the \$10,000 deductible; therefore, the average cost to the Fund is \$40,000. However, cleanup costs of individual sites vary widely based on the extent of contamination and the type of the cleanup required.

HB 251 and SB 708 eligible claims are called remedial claims. Claims covered by policies with the PSTIF are called insurance claims. For the year ending June 30, 1999, approximately 64% of the claims expenses were for remedial claims, and approximately 36% of the claims expenses were for insurance claims.

The primary source of revenue to the PSTIF is the transport load fee. The fee is twenty-five dollars per transport load of 8,000 gallons. The transport load fee is collected by the Department of Revenue (DOR). Transport load fee revenue for the year ending June 30, 1999, was approximately \$13.5 million.

The PSTIF fund balance is required by statute to be at least \$12 million but not more than \$100 million. The PSTIF's liabilities currently exceed its assets because of potential long-term liabilities for remedial claims. However, for purposes of calculating the fund balance for statutory compliance, the PSTIF Board personnel deducts only accounts payable and encumbrances from the assets, resulting in a positive fund balance of over \$55 million as of June 30, 1999.

OVERSIGHT DIVISION
Petroleum Storage Tank Insurance Fund
Program Evaluation 1999

The Petroleum Storage Tank Insurance Fund expires on December 31, 2003, unless extended by action of the Missouri General Assembly.

The following income statement summarizes PSTIF revenues and expenses for the fiscal year ending June 30, 1999 (unaudited):

Revenues:	
Transport Load Fee	\$13,400,491
Tank Fees and Participation Fees	1,263,983
Interest	3,178,750
Other	<u>75,566</u>
Total Revenues	<u>\$17,918,790</u>
Expenses:	
Claims	\$12,651,067
Third Party Administrator Contract	1,934,322
DNR Expenses	1,888,776
PSTIF Board Expenses	145,659
Hancock Refund	769,813
Other	<u>92,125</u>
Total Expenses	<u>\$17,481,762</u>
Net Increase in Fund Balance	\$ <u>437,028</u>

Objectives

The evaluation of the Petroleum Storage Tank Insurance Fund included the inspection of records for the purpose of providing information to the General Assembly for their consideration of proposed legislation and appropriation bills. The Oversight Division's evaluation focused on the duties of the staff of the PSTIF Board and the Department of Natural Resources as they relate to the Petroleum Storage Tank Insurance Fund.

Scope/Methodology

Our evaluation included interviewing personnel of the PSTIF Board, DNR and third party administrator; reviewing statutes, rules and regulations; reviewing policies and procedures; examining financial records; evaluating

contracts; and reviewing claim files.

Our scope was not limited to any specific fiscal years; however, most of the information examined was from fiscal years 1999 and 1998.

Chapter 2 - Claims

Comment #1

The PSTIF Board does not require tank owners to obtain bids for the cleanup and site characterization work reimbursed by the PSTIF.

Our review of PSTIF claim files noted 12 of 22 claim files did not contain bid documentation for the cleanup and site characterization work approved for reimbursement by the Fund. When the Board of Trustees assumed control of the Fund, a policy was established whereby bids were not required for cleanup and site characterization work. The third party administrator for the Fund reviews the cost proposals submitted by the site owner and approves costs based on standards as established by the Board.

Section 319.131.9(2), RSMo, states, "The owner or operator shall solicit bids for actual remediation and clean-up work as provided by rules of the board." This subsection pertains to cleanup of releases from underground storage tanks taken out of use prior to December 31, 1997 and reported to DNR prior to December 31, 1997.

As established in 10 CSR 20-12.060, a minimum of three bids for any proposed closure, a minimum of two bids for assessment or site characterization and a minimum of three bids for corrective action/remediation are required of tank owners.

Based on a survey conducted by the Vermont Department of Environmental Conservation in May, 1999, nineteen states, including Iowa, Kansas, Nebraska, Wisconsin and Louisiana, require competitive bids of tank owners.

OVERSIGHT DIVISION
Petroleum Storage Tank Insurance Fund
Program Evaluation 1999

The Board's policy does not promote a competitive atmosphere among contractors and environmental consulting firms since the site owners are no longer required to obtain bids for the work. Owners can even be reimbursed for cleaning up their own site. Tank owners have limited financial incentive to contain cleanup costs. They are only liable for the first \$10,000 of cleanup costs, and cleanup costs can range from \$1,000 to \$1,000,000 per site.

The Oversight Division recommends bidding requirements be enforced as established by section 319.131.9(2), RSMo, and 10 CSR 20-12.060.

Comment #2

Some claims reimbursed by the PSTIF exceeded the approved budget for the cleanup work.

Our review of PSTIF claim files also noted 2 of 22 claim files tested in which the amount of expenditures reimbursed by the Fund exceeded the approved budget for the cleanup work. The PSTIF reimbursed the site owner for the additional costs incurred even though they had not granted prior approval.

The PSTIF policy requires cleanup costs to be pre-approved by the Board. Failure to obtain approval of the budgeted cleanup costs is supposed to subject the fund participant or fund beneficiary to a reduction or denial of benefits. Oversight's review of the claim files indicated the adjuster at the site made the owner aware of this policy and warned that additional costs may not be covered by the Fund. However, in some cases the costs were paid anyway.

We recommend the PSTIF staff follow their established policy of requiring costs to be pre-approved by the Fund before reimbursement is made to the site owner.

Chapter 3 - Inspections

Comment #3

DNR has not ensured release protection of some storage tanks since they have not inspected them for three to seven years.

Our review of tank owner registration files noted many sites that had not been inspected by the DNR in the last five years and several that had never been inspected. Ten of twenty sites reviewed had not been inspected by the DNR for at least three years, and some sites had not been inspected for as many as seven years. Six of twenty sites selected have never been inspected by the DNR.

As established in 10 CSR 20-10.041, petroleum underground storage tank systems must provide release protection for tanks and piping. The site owners are required to maintain documentation of the monitoring performed for all tanks and piping.

Site owners are not required to submit evidence of monitoring performed on tanks and piping to the DNR. Without performing site inspections of underground storage tank systems, the DNR has no assurance that these systems are in compliance with the regulations. As a result, many sites have the potential for violations, and the DNR would not be aware of the problems.

The Oversight Division recommends all underground storage tank sites be inspected on a regular basis to ensure compliance with the regulations.

Chapter 4 - Database

Comment #4

The PSTIF has spent approximately \$16,000 on a consulting contract to review and analyze DNR's existing petroleum storage tank data.

The PSTIF Board contracted with a consultant to review and analyze DNR's existing petroleum storage tank database.

The passage of HB 251 in 1995 and SB 708 in 1996 opened the window of opportunity for the cleanup of certain additional properties containing petroleum storage tanks. DNR has been updating the information in their database, but the PSTIF Board is not relying on the DNR database to identify these sites. Therefore, all of the sites potentially eligible to receive benefits from the PSTIF may not have been identified.

The PSTIF has spent approximately \$16,000 on a consulting contract to review and analyze existing petroleum storage tank data maintained by DNR. The use of existing state resources to update DNR's database would save the PSTIF additional consulting fees.

The Oversight Division recommends the PSTIF Board and the DNR staff work together to create a reliable database to identify properties potentially eligible to receive benefits from the Petroleum Storage Tank Insurance Fund.

Chapter 5 - Monitoring

Comment #5

The Third Party Administrator is not required by the PSTIF Board to be audited.

The PSTIF has contracted with a third party administrator (TPA) for claims management. The TPA was paid approximately \$2 million by the Board and administered approximately \$12.6 million in claims in FY 1999 but is not required by the PSTIF Board to be audited.

The contract with the TPA states, "the contractor shall cooperate and assist with the conduct of any audits of the contractor's work in relation to the contract which may be required and authorized by the Board, State Auditor's Office, or any other party authorized by the Board to conduct such audit." The contract further states, "The contractor shall agree and understand that assistance for such audit shall be provided at no additional charge to the Board."

The PSTIF Board has limited staff available to monitor the activities of the TPA. Regular performance audits would provide additional monitoring of the terms of the contract between the TPA and the Board.

The Oversight Division recommends the PSTIF Board require regular performance audits of the TPA either by an independent auditor or DNR's internal auditors.

The Oversight Division also recommends DNR consider performing an internal audit of the Petroleum Storage Tank Insurance Fund.

Chapter 6 -Personal Services

Comment #6

DNR did not adjust their staff after creation of the PSTIF Board of Trustees and reduction in tank insurance duties.

The passage of SB 708 in 1996 created the Board of Trustees of the Petroleum Storage Tank Insurance Fund. The Board hired an executive director and assistant to manage the Fund, which was previously managed by DNR. The Board approved responsibility for certain tank insurance duties, for example approving budgets for cleanup projects, to be with the third party administrator.

DNR did not reduce its staff or funding from the PSTIF to reflect their reduction in tank insurance duties. DNR transferred approximately nine FTE who worked on tank insurance duties to other DNR duties.

The PSTIF Board and DNR have entered into a Memorandum of Understanding (MOU) for fiscal year 2000. The MOU states, "In the event the PSTIF Board of Trustees requests adjustments to the proposed budget and/or supporting work plan, the PSTIF and DNR shall negotiate a revised budget and/or work plan for the Board of Trustees approval by September 1 of each fiscal year. The annual work plan shall provide a listing of persons within the department who shall be responsible for communication to PSTIF on various subjects."

The Oversight Division recommends DNR adjust their staffing in accordance with the PSTIF Board's changes by following the MOU to define the responsibilities of the PSTIF Board and DNR.

Comment #7

DNR requested more FTE in fiscal notes than were actually funded to accomplish the provisions of the proposals.

In the fiscal note for HB 251, passed in 1995, DNR requested 19 FTE from the Underground Storage Tank Insurance Fund (currently the Petroleum Storage Tank Insurance Fund). DNR was actually funded for 15 FTE.

In the fiscal note for SB 708, passed in 1996, DNR estimated 35.5 FTE from the PSTIF would be needed to implement the provisions of the bill. DNR's budget request for SB 708, prepared October 1, 1996, was for only 23 FTE (16 for DNR and 7 for the Board), which was 12.5 FTE less than the fiscal note estimate. The reduction in estimated resources reportedly resulted from a management decision to phase in the program. DNR was actually funded for 18.5 FTE (14.5 for DNR and 4 for the Board).

Therefore, under the two bills, DNR estimated in the fiscal notes a total of 54.5 FTE would be needed for the program, but was only funded for 33.5 FTE. This resulted in a difference of 21 FTE, or 38% less than estimated.

The fiscal notes for HB 251 and SB 708 appear to overstate the FTE necessary to carry out the requirements of the bills. DNR has been able to reduce tank work backlogs existing before and after the passage of the two bills and has maintained target timelines since reducing the backlog by paying staff to work overtime.

The Oversight Division recommends DNR carefully consider staffing needs in their fiscal note estimates, for example, by only including overtime costs for temporary backlogs of work. DNR may also consider obtaining information from other states with similar programs to serve as a basis for their estimates.

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Mel Carnahan, Governor • Stephen M. Mahfood, Director

OFFICE OF THE DIRECTOR

P.O. Box 176 Jefferson City, MO 65102-0176

January 26, 2000

Ms. Jeanne Jarrett, Director
Oversight Division
Committee on Legislative Research
State Capitol Building
Jefferson City, Missouri 65101

Dear Ms. Jarrett:

Enclosed are both the Department of Natural Resources' and the Petroleum Storage Tank Insurance Fund Board of Trustees' responses to the Program Evaluation conducted by the Oversight Division of the Committee on Legislative Research. Please note that the board of trustees gave responses 1, 2 and 5, while the department gave responses 3, 6 and 7. Both parties collaborated on response 4. The department has concerns about comment 7, and respectfully ask that it be removed from the program evaluation.

We appreciate the thorough and professional manner exhibited by you and your staff while conducting this evaluation. If you have questions, please feel free to contact Ed Schneider, Director of Internal Audit, Department of Natural Resources at 573/751-1348. Thank you again for your review of this important state program.

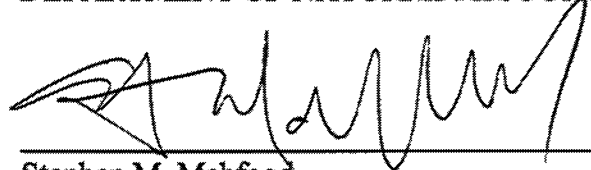
Sincerely,

PETROLEUM STORAGE TANK
INSURANCE FUND BOARD



William H. Creech III
Chairman

DEPARTMENT OF NATURAL RESOURCES



Stephen M. Mahfood
Director

**DNR'S RESPONSES TO LEGISLATIVE OVERSIGHT'S
AUDITORS' COMMENTS – 1999**

Comment #1: The PSTIF Board does not require tank owners to obtain bids for the cleanup and site characterization work reimbursed by the PSTIF.

Response: In 1996-97, PSTIF imposed an absolute requirement on all Fund participants and beneficiaries that a minimum of three bids had to be obtained for UST removal projects (which sometimes include cleanup), two bids for site characterization projects, and three bids for corrective action. Experience demonstrated that this requirement often dramatically slowed the process of getting sites cleaned up, did not assure that economical prices would be paid, and was somewhat impractical.

For example, some property owners (such as major oil companies), already had completed competitive bidding processes and entered into national contracts with environmental firms, laboratories and other contractors for conducting the work necessary to clean up their tank sites; they were unwilling or unable to bid each site or project in Missouri individually, and doing so would have actually increased costs. In other cases, after initial site characterization demonstrated the need for additional site characterization, it was neither cost effective nor productive to rebid the second or third site characterization project. Still another problem was encountered in cases where the two or three bids submitted by a property owner were all higher than the Fund thought reasonable, or yet the owner was unwilling to try and get a lower bid, since he had obtained the requisite number of bids for a project.

For these and other reasons, the Board sought an alternative approach, which would still assure that PSTIF monies were spent prudently, but would not delay cleanup projects. The solution it chose is reflected in the Board's Claim Kit, first issued in April 1998, and in its regulations found at 10 CSR 100-5.010. *Essentially, the Board requires the Fund participant or beneficiary to prove that he/she has obtained enough bids to assure that the costs he/she is planning to incur are reasonable and customary within the local marketplace.* The Board has retained the right to reject any and all bids or cost estimates, and requires its Fund Administrator to demonstrate proficiency at controlling costs.

The PSTIF Board of Trustees believes this approach has preserved the advantages of "competition in the marketplace" and satisfies the statutory requirement for those projects governed by Section 319.131.9(2), while solving the problems caused by a more inflexible approach. Supporting this conclusion is the fact that the average cost of cleanup of tank sites in Missouri is substantially less than in most other states, including several that require a certain number of bids for each project.

Note: The comment references 10CSR 20-12.060. This rule was rescinded by vote of the Clean Water Commission on November 17, 1999. The effective date of the rescission is March 30, 2000.

Comment #2: Some claims reimbursed by PSTIF exceeded the approved budget for the cleanup work.

Response: Both of the cases cited were projects involving the removal of underground tanks. Prior to tank removal, it is impossible to know how much contaminated soil or water may exist and need to be removed or remediated. The "approved budgets" for these projects were estimates, based on an assumption that approximately 500 cubic yards of soil and little or no water would need cleanup. In one case, 527 yards of soil and 26,650 gallons of contaminated water was encountered during the tank removal; the total claim payment was \$38,160, compared to the advance estimate of \$34,000.

In the other case, 1,195 yards of soil was encountered and remediated; payment was \$30,278, compared to the advance estimate of \$17,816.

In both cases, the *unit costs* reimbursed by PSTIF for remediation of soil and water were equal to or less than the unit costs, which were pre-approved. The reason the total amount of the payment exceeded the initial estimate was the *number of units*, which were involved. The PSTIF Board of Trustees believes this complies with its established policy of paying only those costs, which are determined in advance to be reasonable.

Comment #3: DNR has not ensured release protection of some storage tanks since they have not inspected them for three to seven years.

Response: Although neither state nor federal law requires the department to inspect tank sites at specified intervals, the department agrees that underground storage tanks should be inspected regularly to ensure compliance with the regulations. With 4,100 active tank sites and a large number of additional contaminated sites, it is not possible with current staffing levels to inspect each site more than once every three to four years. Routine inspections also compete with other high priority work such as responding to citizens' concerns about particular tank sites and returning tank owners with violations to compliance. Sometimes routine inspections are assigned a lower priority because of special compliance initiatives such as the December 1998 regulatory deadline for upgrading tanks.

Prior to the institution of the existing database, the department's method of tracking tank sites did not accurately capture inspection dates, making it difficult to reliably identify when facilities were last inspected. Changes to the system were made to address this problem, and inspectors have been provided a list of sites with the most recent date highlighted. They will be focusing their regular compliance inspection efforts on facilities that have not been inspected in the past three to four years.

Comment #4: The PSTIF has spent approximately \$16,000 on a consulting contract to review and analyze DNR's existing petroleum storage tank data.

The department agrees that the PSTIF board and DNR staff should work together to develop and share information needed by both. The department has made all of our data available to the PSTIF board. We are strongly committed to improving information efficiencies and to reducing any unnecessary and duplicative reporting.

The PSTIF notes that this project was designed and undertaken jointly with DNR. PSTIF has access to and utilizes DNR's database on a regular basis, but due to the differing needs of the two entities, not all of the data needed by PSTIF has been captured in DNR's database. The PSTIF Board of Trustees agrees that PSTIF and DNR should continue working together to improve and coordinate database capabilities.

Comment #5: The Third Party Administrator is not required by the PSTIF Board to be audited.

The PSTIF Board of Trustees discussed the need for an audit in July 1999, and postponed conducting one until the projects scheduled by the State Auditor's Office and the Committee on Legislative Oversight were completed. The Board agrees with the recommendation, and a periodic audit will be performed.

Comment #6: DNR did not adjust their staff after creation of the PSTIF Board of Trustees and reduction in tank insurance duties.

The department disagrees with this comment. We have adjusted staff levels as a result of the creation of the PSTIF Board of Trustees. In accordance with the Memorandum of Understanding between the department and the Board, specific tank activities and the resources (including staff levels) needed to carry out those activities are laid out in an annual work plan that is presented to the Board for approval. The Board approved the department's FY00 work plan and the staff levels necessary to implement the plan. That plan justified the need for all of the staff doing tank environmental work including the approximately 9 positions transitioned from insurance duties to environmental duties after the Board was formed. The Board has also approved a FY01 tank budget for the department, which calls for a reduction of 5.5 FTE from PSTIF. The FY01 work plan (still being developed) will describe the tank work that can be accomplished at the reduced staff level. Any further reductions in tank staff and tank work will be negotiated between the department and the Board of Trustees as specified in the MOU. The department is committed to working with the Board to identify appropriate staff levels for FY02 and beyond.

The 9 positions converted from insurance work to environmental work were necessary to administer an effective petroleum storage tank program. Staff levels prior to this conversion were not adequate to carry out the department's statutory duty to protect human health and the environment from leaking tanks. The department was backlogged up to 18 months on the review of tank documents, which not only delayed cleanups, but also frustrated tank owners. Even after these positions were reassigned to environmental work, it was still necessary to authorize overtime work to eliminate the document review backlog. Maintaining these positions has allowed the department to continue to review documents in a timely manner. It has also allowed the department to complete additional high priority work which would not otherwise have been done including most notably an initiative that increased the percent of tanks in compliance with state and federal upgrade requirements from 20 percent to over 98 percent.

Changing position duties from insurance work to environmental work was done with appropriate input from the Office of Administration's Personnel Division. Moreover, it did not increase the amount of PSTIF funds spent by the department for tank-related activities. Departmental expenditures from PSTIF have been and continue to be consistent with appropriation levels approved by the General Assembly.

Comment #7: DNR requested more FTE in fiscal notes than were actually funded or apparently necessary to accomplish the provisions of the proposals.

The department invests considerable effort in developing sound estimates utilizing the best available information. We regularly use information from other states to develop fiscal notes.

In the case of HB251 which amended the underground storage tank law, the department estimated that 19 FTE were needed to implement the provisions of this legislation. In the next budget year, we requested appropriation authority to hire 19 FTE, consistent with the fiscal note for this bill. Ultimately, the General Assembly authorized 15 new FTE, a net reduction of four.

The department estimated we would need 35.50 FTE to implement SB708. This bill created the PSTIF Board of Trustees and vested it with responsibility to administer the Fund. SB708 provided that the general administration of the fund and the responsibility of the proper operation of the fund, including all decisions relating to payments from the fund be vested with the Board. In addition, the bill provided that all staff resources for the Missouri Petroleum Storage Tank Insurance Fund be provided by the Department of Natural Resources or another state agency as otherwise specifically determined by the Board. Since the board was not formed at the time the fiscal note was prepared, the department's fiscal note reflected the best estimate as to the resources needed to implement the legislation.

The department's budget expansion request totaled 23.0 FTE; 16 FTE needed to implement the environmental provisions of the bill, plus 7 FTE on behalf of the Board. Our FY98 budget request was 12.5 FTE less than the fiscal note we filed related to SB708. The department decided to phase in the program to provide an opportunity to evaluate the program. A phase in approach also offered an opportunity for the Board to participate in the department's staffing decisions. The department's phase in approach was documented in the 10/1/96 budget transmittal letter from David Shorr to Mark Ward.

The department included sufficient staff in the fiscal note to cover the possibility that the Board might prefer to hire department staff to process and pay claims, rather than contract with a private party for these services. After the Board was appointed, they decided to continue to contract with a private third party to administer the Fund, rather than hire additional staff within the department to perform this work. Therefore, additional staff were not requested by DNR.

