

Testimony by Carol R. Eighmey, Executive Director, MO PSTIF  
Public Hearing on Proposed Amendments to 10 CSR 26-2.062, 2.078 and 2.082  
August 15, 2013

Good morning. My name is Carol Eighmey; I serve as the Executive Director of Missouri's Petroleum Storage Tank Insurance Fund.

I appear today on behalf of the 3600 participants in Missouri's PSTIF who currently own/operate >10,000 tank systems where fuel is stored. The majority of Trust Fund participants are small business owners; others include cities, counties, schools, hospitals, and the like. And while the number of leaks occurring from these facilities is tiny – fewer than 20 per year – a leak event can seriously disrupt their business to the extent that it destroys livelihoods. We work hard to try and prevent that from happening.

In addition, I speak today on behalf of hundreds of other property owners who are not in the fuel business but, for various reasons, are cleaning up properties that were contaminated in years gone by, before current operating regulations were in place. A majority of these persons are *not* legally liable for the pollution on their properties – rather, they are *voluntarily* cleaning it up so the properties can be redeveloped and can *contribute* to the economic health of their neighborhoods and communities, rather than detracting from it. These Missourians have no other “voice” – they are not members of any trade association, they have no lobbyists. They include widows, children, grandchildren, and purchasers of these properties, and the costs they incur to meet your requirements are borne by all Missourians. It is our fiduciary duty to look out for their interests.

On behalf of these two groups of citizens, I am pleased to offer the following comments:

1) Your current rules require persons who have a leak – or who are cleaning up “legacy pollution” from old tank systems – to comply with requirements contained in seven different documents totaling ~400 pages. This is a cumbersome and difficult task.

Today, you are considering changes that will streamline your requirements into a single guidance document, which will be <200 pages. Much duplicative, inconsistent, or erroneous language in the seven documents has been eliminated or corrected. This alone makes this rulemaking a worthwhile endeavor.

2) In addition, your proposed rulemaking eliminates a requirement to use standardized forms in various reports – also a huge improvement. Nine years ago, the consultant who helped DNR write the 2004 Guidance Document believed that standardized forms were a good thing – and he created several dozen of them. What we all painfully discovered was that the forms are like an appendix in a human being – they may occasionally serve some obscure purpose, but most people function just fine without them! The requirement to use these standardized forms is now clearly

obsolete; some of them are no longer even accurate. Our claimants, however, continue to pay their consultants to fill out these forms and attach them – as an unnecessary appendage – to their reports; then the PSTIF, of course, has to reimburse those costs. So we look forward to the elimination of this requirement.

3) Third, I would note that the proposed rulemaking *does* do impose some new requirements and change some of your numerical cleanup standards. We have reviewed these proposed changes and – while we’re not fans of all of them, and some of them will increase costs – we nevertheless believe they are reasonable and can be implemented without *unduly* increasing costs.

4) In the last few months, a question arose as to how the Department should administer your requirements at active, operating tank facilities. Specifically, if residual impact remains in areas of the property where petroleum equipment exists, and where employees of petroleum equipment companies may be working, how must one assess exposure risks for those portions of the property?

To clarify this, your staff recently issued a memo, which is attached to my testimony. Today, we are requesting that these clarifications be incorporated into the 2013 Guidance Document; a suggestion on how this might be done is included in the attachment to my testimony.

5) In addition, our staff has identified a few minor and non-substantive corrections we would like to suggest be made in the 2013 Guidance Document. I’ll not go through these today; they are attached, and we ask that you receive them as part of our formal comments.

In closing, I would like to thank DNR Director Sara Parker Pauley, along with Aaron Schmidt and Tim Chibnall of her staff, and Dan Henry of my staff, for the very detailed and diligent work they did last winter, sifting through thousands of words, numbers, charts and pages to craft these amendments. As you can imagine, it took a lot of “sweat and blood.” But what has been accomplished – while it undoubtedly falls short of perfect – is a *significant and substantial* step forward, and one that is long overdue.

On behalf of all our Trust Fund participants, and all our claimants, I thank you for the opportunity to testify today and I urge you to adopt these recommended changes to your requirements.

Comments on DNR's Proposed Amendments to the Tanks RBCA Guidance Document  
(Listed by section or section number)

- 1.1 – First paragraph accurately refers to the 2004 document as “draft guidance.” Suggest first sentence in second paragraph be revised as follows: “In 2005, the process provided for by the **draft** guidance was modified...”
- 2.1 – Second sentence refers to Section 1.3 of the Guidance Document, which will no longer exist. Suggest deleting the phrase, “...as discussed at Section 1.3 of this document...”
- 2.2.1 – Suggest renaming title of subsection, “**Release Discovery**” instead of “Site Discovery,” to be consistent with other language in the Guidance.
- 2.4 – Suggest revising fourth sentence as follows, “Such communication must occur throughout the MRBCA process, from **release** discovery to issuance...,” to be consistent with other language in the Guidance.
- 3.1 – Suggest revising first sentence of second paragraph as follows: “...may ultimately lead to **site-discovery of a release.**”
- 4.4.1 – Since an explicit list of required photographs is being added, suggest deleting the previous, less-precise sentence toward the end of the section that says, “During the tank closure process, sufficient color photographs shall be collected to document the condition of tanks, excavation, pads, etc. and submitted with the closure report.”
- 4.5.8 – Suggest revising to more accurately describe current practices, as follows: “If treatment will be via on-site landfarming, **approval must be obtained from MDNR’s Tanks Section as part of the Corrective Action Plan for the petroleum release. Off-site landfarms require a permit issued by MDNR’s Water Protection Program; for information concerning landfarm permits, contact MDNR’s WPP at ...**”
- 5.1 – Suggest revising the last item in the third bulleted list to be consistent with change to terminology made throughout the document, as follows: “Information about corrective action measures ~~or risk management activities~~ that have been conducted and are planned.”
- Similarly, suggest revising the next sentence, as follow: “...beyond that discussed herein might be required to develop a **Corrective Action Plan** or to complete a Tier3...”
- 5.2 – The first paragraph appears to have been written in 2004 to help owners and their consultants understand how to transition to the new MRBCA Guidance; it is largely obsolete today and – as a summary of the RBCA process – discusses in a general way the tasks that are more specifically presented throughout the document. Suggest deleting the entire paragraph.

**5.4.5** – The second paragraph references MEGA, a compilation of data that is now obsolete. Suggest revising as follows: “Two valuable sources of regional hydrogeology and aquifer characteristic information are the Well Information System, which contains all records of known wells in Missouri and is available at <http://dnr.mo.gov/mowells/publicLanding.do>, and “CARES” maps, available at <http://ims.missouri.edu/moims/step1.aoi/countylist.asp>.”

**5.6.4** – The last paragraph of the new text advises the reader to “refer to Subsection 5.8 for developing a sampling plan for VWC.” However, though Subsection 5.8 contains helpful information for designing one’s sampling plan, it is not specific to VWC. Suggest deleting the words, “for VWC” from the text in 5.6.4.

**5.9.1** – This subsection conflicts with information contained in Subsection 6.3.3 regarding POD and POE. Suggest it be revised accordingly.

**Table 5-1** – The Department accepts Lab Method 3511 for TPH-DRO, as long as the lab meets the same detection limits and QA/QC requirements as for other methods. Suggest this method needs to be added to Table 5-1 as an option for TPH-DRO.

**6.1.2.1** – Suggest insertion of a sentence at the end of this subsection, as follows: “Because petroleum equipment companies are subject to other regulatory requirements regarding worker exposure, it is not necessary to evaluate dermal contact risk associated with soil or groundwater exposures in the areas of the property where tanks/piping are located.”

**6.1.3.1** – We suggest inserting one sentence at the end of this subsection, as follows: “At an active tank facility, the exposure model can assume no building will be constructed over the tank pit or where the dispensers are located.”

**7.5** – Suggest revising the third paragraph, as follows: “Depending on this distance and the depth to groundwater...,” so the text will match the terminology used in Table 7-4.

**Introduction to Section 9** – The new text added just prior to Subsection 9.1 references “light non-aqueous phase liquid” and “LNAPL” in several places. Should this paragraph use the term “free product” instead?

**10.1** – The second bulleted list contains two references to “LNAPL” in two places; suggest the first reference should be deleted and the second changed to “free product.”

**Appendix C** – The numbering of the footnotes may need to be corrected.



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

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### MEMORANDUM

JUL 11 2013

BY PSTIF

DATE: JUL 03 2013

TO: Ken Koon, Chief  
Tanks Section  
Hazardous Waste Program

FROM: Aaron Schmidt, Deputy Director  
Division of Environmental Quality

SUBJECT: Exclusion of Exposure Pathways Relative to an Active Underground Storage Tank Pit

For the purposes of this memo, the term "tank pit" is defined as one or more currently operating underground storage tanks (USTs) and the granular fill material immediately surrounding the operating USTs.

When evaluating the indoor inhalation of vapors exposure pathways for soil and groundwater for a future residential or non-residential land use scenario, the tank pit needs not be included in the evaluation. All areas outside of the tank pit shall be included in the evaluation.

When evaluating the construction worker dermal contact with soil and groundwater exposure pathways, contamination within the tank pit, whether free product or dissolved phase contamination, need not be included in the evaluation. The evaluator shall assume that construction workers working in an active tank pit are knowledgeable of the possibility for petroleum contamination to be present and such exposures will be prevented via the use of personal protective equipment by the workers.

All other exposure pathways, receptors and exposure domains shall be evaluated.

AS:lls