ADMIN - PSTIF / BOARD OF TRUSTEES
GENERAL CORR. 1998 TO 2002

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND THE BOARD OF TRUSTEES, MISSOURI PETROLEUM STORAGE TANK INSURANCE FUND

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HAZARDOUS WASTE PROGRAM
MISSOURI DEPARTMENT OF
NATURAL RESOURCES

Purpose:

The purpose of this Memorandum of Understanding (MOU) is to define the relationship between the Missouri Department of Natural Resources (DNR) and the Missouri Petroleum Storage Tank Insurance Fund (PSTIF) as it relates to the regulation and management of petroleum underground and aboveground storage tanks in the state of Missouri and to establish communication responsibilities. It is also the purpose of this MOU to define reporting and performance measurement requirements and to insure that coordination and communication occur as DNR engages in its annual planning and budgeting process, so that environmental objectives related to tanks are clearly identified, services are provided to the public in an efficient manner, and the Board of Trustees fulfills its fiduciary responsibility relative to fund expenditures.

Background:

Releases from petroleum storage tanks can cause widespread contamination of soils and ground and surface waters. The DNR seeks to protect human health and the environment from these releases through regulatory requirements designed to prevent releases and by assuring that contamination, when it occurs, is properly and adequately mitigated.

Within DNR, the Division of Environmental Quality's (DEQ) Hazardous Waste Program (HWP) is primarily responsible for these activities. In addition, DNR's Division of Geology and Land Survey, and DEQ's Environmental Services Program and Regional Offices engage in activities in support of these overall objectives under the direction of the HWP.

The Petroleum Storage Tank Insurance Fund (PSTIF) serves two purposes: It insures owners and operators of petroleum tanks against the risks associated with a leak or spill from their tanks, and it provides funding for cleaning up certain old tank sites where tanks are no longer in use.

In carrying out the first of those purposes, PSTIF serves as a mechanism through which Underground Storage Tank (UST) owners/operators may comply with state and federal financial responsibility requirements. The Missouri General Assembly originally established the PSTIF in 1989 because private insurance was not generally available to UST owners and operators to satisfy these requirements. The General Assembly gave DNR responsibility for administration of the Fund in 1991, and the Fund insured numerous UST owners from 1992 until the present.

In 1995, the General Assembly passed HB251, which expanded the responsibilities of PSTIF to include payment for cleanup of sites where tanks had been closed. The same bill authorized PSTIF to pay ongoing costs of cleanup at PSTIF-insured sites, where a spill/leak had occurred before the owner was insured by PSTIF.

In 1996, the General Assembly passed SB708, which expanded the responsibilities of the PSTIF to provide insurance coverage to certain aboveground storage tanks (AST) owners and operators, and to pay for cleanup of certain properties where ASTs had previously operated but were now closed. SB708 also established a Board of Trustees and transferred responsibility for PSTIF to that board.

The Board was appointed by the Governor in the spring of 1997. In August 1997, the Board employed an executive director to direct the operations of the Fund and be accountable to the Board for Fund operations and activities. DNR staff and the executive director worked together to transfer responsibility for Fund activities and operations from DNR to the Board's staff, and completed this transfer in November 1997.

Since 1992, the Fund's daily work has been done by contract staff, via a contract for third-party administration (TPA) services. The Board has chosen to continue this practice; details of the services are contained in a formal written contract between the Board and its TPA.

WHEREAS, Sections 319.100 through 319.127 and Sections 319.135 through 319.139, RSMo require DNR to;

- Establish performance standards for USTs brought into use after August 28, 1989;
- Establish performance standards for USTs in use on that date, (including "upgrade standards");
- Require tank owners to apply for certificates of registration from DNR;
- Establish leak detection and record keeping requirements;
- Establish release reporting requirements;
- Establish requirements for corrective action in response to a release;
- Establish tank closure requirements;
- Establish financial responsibility requirements for UST owners; and
- Issue certificates of registration to owners/operators of USTs, upon application by the owner/operator and payment of the specified fee; and

WHEREAS, DNR is authorized to incorporate federal rules, inspect UST facilities, inspect records, determine compliance with and enforce statutory and regulatory requirements via administrative and civil enforcement procedures; and

WHEREAS, Sections 644.006 through 644.141, commonly referred to as the "Missouri Clean Water Law," grant DNR statutory authority to protect "waters of the state" from contamination in general; and

WHEREAS, Sections 319.129 through 319.133 RSMo establish the PSTIF Board of Trustees; and

- Establish the Petroleum Storage Tank Insurance Fund, and specify what its purposes and liabilities are;
- Specify the characteristics and terms of members of the board;
- Specify the Board's responsibilities, which include "the proper operation of the fund, including all decisions relating to payments from the fund";
- Authorize the Board to utilize staff of any state agency, and/or obtain services via contracts, in order to carry out its fiduciary and other responsibilities;
- Authorize the Board to issue regulations;
- Require the Board to establish an Advisory Committee;
- Require the Board to establish a surcharge on petroleum products;
- Require the Board to establish fees for owners/operators who wish to obtain insurance coverage from the fund; and
- Require the Board to annually assess the financial soundness of the Fund;

NOW, THEREFORE, the DNR and PSTIF agree as follows:

1. The DNR shall provide a work plan and budget for the ensuing Fiscal Year no later than June 1 of each year, including the following;

   - A description of tank activities and associated staff resource needs.
   - Major activities associated with each tank program objective.
   - Workloads for each activity.
   - Estimated staff resources for each activity.
   - New or additional tasks that will could be undertaken should time/resources become available.
   - A categorization of the tank program budget, by funding source.

2. The PSTIF shall review the proposed work plan, shall publicly discuss the work plan and budget, and shall take formal action to approve or disapprove the work plan and budget at its first meeting of each Fiscal Year. 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 workplan for the Board of Trustees approval by September 1 of each Fiscal Year.

3. 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 listing shall include the DNR Director's designee from the Director's Office staff to act as point of contact with the PSTIF Executive Director on all policy and legislative issues.

4. Tasks unanticipated in the annual work plan which the DNR determines a need to perform, or major unanticipated purchases for which PSTIF funding may be required shall be presented to PSTIF in the form of a work plan amendment for its approval.

This is not intended to include tasks on purchases which are undertaken to abate imminent and substantial threats to human health and the environment.

5. The Director or, in his absence, his designee shall serve as member of the Board of Trustees.

6. The PSTIF shall be administratively attached to the DNR Director's Office and be represented as such on the department organizational chart.

7. The PSTIF Board and/or staff shall be included in DNR planning and budgeting processes relating to tank activities relevant to PSTIF's responsibilities and PSTIF funds, and as mutually agreed to by the DNR Director and the PSTIF Executive Director.

8. Departmental activities including public relations efforts, legislative tours, and preparation of publications, such as the Official Manual, State of Missouri (Blue Book), and State Telephone Directories shall include relevant PSTIF information and be coordinated by the Director's Office point of contact, in consultation with the PSTIF Executive Director.

9. When the DNR or PSTIF are requested to provide information to the Legislature, Governor's Office, or other state agencies regarding PSTIF, such as fiscal notes on legislation affecting the Fund, communications with the Ethics Commission, budget information for the Office of Administration, etc, the PSTIF Executive Director shall be responsible for preparing a response, based on policies and directives of the Board. Such responses shall be transmitted to the DNR Director's Office for appropriate transmittal. Any departmental issues raised by such responses shall be resolved between the DNR Director's Office and the PSTIF Executive Director prior to transmittal.

10. The department and PSTIF shall coordinate on drafts of outreach/public information which represents the activities or responsibilities of both agencies, to ensure that published information is accurate and consistent with departmental and PSTIF policies.

11. The DNR's Environmental Services Program will notify PSTIF when tank releases requiring immediate environmental response are reported to the department's spill line or emergency response staff. The DNR shall direct activities at such sites.

12. The DNR shall refer any inquiries related to PSTIF eligibility and claim issues to the PSTIF. PSTIF shall refer requests for interpretations of DNR's tank regulations, inquiries about the rationale behind the regulations, inquiries about applicability of the regulations, or suggested changes in the regulations to DNR's HWP.

13. The DNR and PSTIF shall jointly evaluate ways to integrate their respective environmental compliance activities to reduce duplication and improve services.

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14. The DNR's HWP and PSTIF shall continue to work together to explore ways to streamline tank information procedures, so that the paperwork burden on tank owners is reduced and unnecessary duplication is avoided.

15. The PSTIF and DNR jointly acknowledge that the desire to obtain and maintain insurance coverage from PSTIF is a powerful incentive for tank owners to comply with Petroleum Storage Tank rules promulgated by DNR, and the desire to receive claim payments from PSTIF can be a powerful incentive for tank owners/operators and property owners to conduct cleanups in a manner which satisfies DNR's corrective action regulations. Both parties agree to jointly explore possibilities for utilizing these incentives to support the objective of protecting the public health and environment.

16. Appropriate staff shall be available to meet and discuss general tank coordination issues. These meetings shall be held as needed, but at least quarterly. Meeting participants shall include the director of HWP, the chief of the HWP's Tank Section, the PSTIF Executive Director, and the PSTIF's TPA manager. In addition to general coordination meetings, appropriate staff shall be available to meet to discuss specific issues as they pertain to individual tank sites.

17. Appropriate DNR staff shall attend PSTIF board meetings for purposes of addressing issues and making information available to the PSTIF Board as needed. A HWP representative shall participate on the board's advisory committee.

18. DNR's HWP shall provide an electronic copy of its tank database to PSTIF's Executive Director or third party administrator at least monthly. PSTIF shall provide an electronic list of which UST sites are insured to DNR's HWP at least monthly; such information shall either be provided in such a way as to enable HWP to determine where coverage has lapsed or been denied, or a separate communication containing this information shall be provided. PSTIF shall also provide information to DNR's HWP which identifies those sites where PSTIF is paying for cleanup of a petroleum release. Currently, PSTIF provides this information via copies of cost approval letters; this method will be continued until such a time as an alternative method of providing this information is mutually agreed upon. DNR and PSTIF agree to regularly review their communication procedures and evaluate ways of improving and streamlining them, including enhanced use of electronic data transfers.

19. The DNR shall provide reports to PSTIF, on a frequency and in a format agreed to in the annual Work Plan.

20. The DNR's HWP shall send copies of pertinent site correspondence to the PSTIF's third party administrator. This includes closure notice approval/denial, closure report approval/denial, no further action letters and corrective action plan approval/denial.

21. When a petroleum tank release has occurred, PSTIF recognizes that it is generally less confusing to owners, and more efficient if DNR reviews and approves corrective action plans prior to PSTIF committing funding for the work. PSTIF agrees to delay its pre-approval of costs for corrective action until such time as DNR has approved the proposed corrective action plan, except in rare situations where it may be in the best interests of the Fund to act more expediently. In such cases, the PSTIF shall notify the department of the approval as early as practical, along with the reason for the expedited pre-approval.

22. The department and the PSTIF shall promptly route any misrouted documents or correspondence to the appropriate party. PSTIF will forward originals of any ~~toak~~ tank registration forms received to DNR's HWP as soon as practicable. The DNR's HWP shall forward originals of any bids or insurance applications or claims to the PSTIF's third party administrator as soon as practicable.

23. The DNR and PSTIF agree that, as certain legal issues have arisen, such as access to files by parties to litigation, the TPA and others, the DNR and PSTIF shall seek the advice of the Attorney General's Office as to their respective legal obligations before finalizing an agreement as to access to files and related issues and that agreement shall be subsequently incorporated into this MOU as an addendum.

24. The DNR shall continue to provide administrative and operational support to PSTIF, including but not necessarily limited to:

- Assistance from its Accounting Program in implementing SAM II and other accounting matters, as mutually agreed upon;
- Payroll processing services;
- Advice and assistance from its Management Information Services Program, including hardware and software purchases, periodic installation of software/hardware upgrades, and problem-solving; and
- Access to its office supplies and mailroom services; PSTIF shall pay for such services at the usual rates.

This Memorandum of Understanding are effective as of this 21st day of July, 1999.

Bart Creech, Chair
PSTIF Board of Trustees

Stephen Mahfood, Director
Department of Natural Resources

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Addendum #1

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND THE BOARD OF TRUSTEES, MISSOURI PETROLEUM STORAGE TANK INSURANCE FUND

It is agreed that the following two paragraphs are added to the MOU:

25. DNR's HWP will coordinate with PSTIF during its annual development of assignment lists for the Division of Geology and Land Survey (DGLS) and/or Environmental Services Program (ESP) to perform source investigations, will provide a copy of the final list to PSTIF, and will notify PSTIF whenever sites are added or removed. It is recognized by both parties that advance coordination may not be possible in cases where DGLS or ESP are responding to emergency situations.

26. DNR and PSTIF will coordinate their plans for conducting routine inspections of UST sites. PSTIF will use available data from DNR showing which sites DNR has recently inspected as it prepares its inspection list each year, and will provide a list of the sites it intends to inspect to DNR in advance of conducting inspections. DNR will then disseminate this information internally so that its inspectors can avoid duplication of effort. This shall not impair DNR's authority to investigate complaints or enforce compliance with its regulations, or its obligation to periodically inspect all UST sites at intervals deemed appropriate by DNR.

Effective this 15th day of September, 1999.

William H. Creech III, Chairman
PSTIF Board of Trustees

Stephen Mahfood, Director
Department of Natural Resources

ADDENDUM #2
MEMORANDUM OF UNDERSTANDING BETWEEN THE MISSOURI DEPARTMENT OF NATURAL RESOURCES AND THE BOARD OF TRUSTEES OF THE MISSOURI PETROLEUM TANK INSURANCE FUND

1. **Sunshine Law Requests.** Whenever a Sunshine Law request is submitted by any person to the PSTIF to review records pertaining to any sites or facilities that have been referred to the Attorney General's Office for enforcement under Chapter 319.127, the PSTIF agrees to immediately notify the MDNR Hazardous Waste Program, UST Enforcement Unit Chief. The MDNR's legal counsel shall have access to and may review records in the custody of the PSTIF and may notify the PSTIF Executive Director if the MDNR believes any documents found in those records should be closed for any legal reason. Likewise, whenever a Sunshine Law request is submitted by any person to the MDNR to review records pertaining to any sites or facilities that are the subject of any litigation or anticipated litigation involving the PSTIF, as identified by the PSTIF Executive Director, which may include claim appeals and/or third party claims, the MDNR shall immediately notify the PSTIF Executive Director. The PSTIF's legal counsel shall have access to and may review records in the custody of the MDNR and may notify the MDNR if the PSTIF believes any documents found in those records should be closed for any legal reason.

The MDNR agrees to provide to the PSTIF, on a monthly basis, a list of all sites or facilities that have been referred to the Attorney General's Office for enforcement action. The PSTIF agrees to provide to the MDNR, on a monthly basis, a list of all claimants and/or sites that are the subject of litigation or anticipated litigation. The PSTIF's list shall separately designate sites and/or claimants that are the subject of a third party claim and shall include the name of any legal counsel appointed to represent the interests of the PSTIF's insureds.

2. **Notification.** The PSTIF agrees that it will make every effort to notify the MDNR whenever it becomes aware of a situation that is likely to lead to a release of petroleum or where a release of petroleum is causing a threat or imminent threat to human health or the environment. In such cases, the PSTIF reserves the right to not disclose this information, unless such information triggers a reporting requirement under state or federal environmental statutes.

3. **Third Party Litigation.** When in the course of handling, investigating or defending third party claims, the PSTIF may gather, obtain or create confidential information from its insureds, third party legal counsel or their agents or contractors, which is not otherwise known to the MDNR, and which may be related to the MDNR's statutory responsibility to protect human health and the environment. The parties acknowledge that it will usually be in the best interest of both parties for the PSTIF to share this information with the MDNR, however, there may be isolated instances where this is not the case. The parties hereby agree that there will be a presumption that such confidential information shall be shared with the MDNR, unless the PSTIF and its legal counsel determine that it is not in the best interest of the PSTIF or that of its insured to share such information. In

such cases, the PSTIF reserves the right to not disclose this confidential information, unless such information triggers a reporting requirement under state or federal environmental statutes or unless such information otherwise identifies a threat or imminent threat to human health or the environment. Where confidential information is shared with the MDNR, it shall be marked "confidential" by the PSTIF. Such information shall be kept confidential by the MDNR pursuant to the Confidentiality Agreement attached hereto. The terms of the Confidentiality Agreement shall not interfere with or prohibit the MDNR from taking whatever action it deems appropriate to address the threat or imminent threat to human health or the environment.

When a third party has filed suit or threatened to file suit against one or more of the PSTIF's insureds, then the MDNR agrees that it will make every effort to avoid any communications with the third party or their legal counsel specifically related to the third party's damage claims against the PSTIF's insured(s) and shall copy the PSTIF on all correspondence with the third party or their legal counsel.

4. **Closed Records.** The MDNR agrees to maintain all closed records under the Missouri Sunshine Law that it obtains by virtue of its representation on the PSTIF Board of Trustees in a designated file kept in the office of the MDNR Director and/or his designee serving as trustee. The MDNR further agrees to take steps to insure that these records are not distributed outside of the office of the MDNR Director and/or his designee. The PSTIF shall make every effort to mark such records as "closed" or "confidential". As noted above, the terms of this Confidentiality Agreement shall not interfere with or prohibit the MDNR from taking whatever action it deems appropriate to address a threat or imminent threat to human health and the environment.

5. **Litigation.** The parties acknowledge that it is frequently in the State's collective interest to involve the PSTIF in the resolution of enforcement cases that have been referred to the Attorney General's Office, as the PSTIF may provide the resources to fund cleanup activities that are at the center of the litigation. The MDNR agrees that whenever it makes a new referral to the Attorney General's Office under § 319.127, it will identify the new referral in its monthly list of sites provided to the PSTIF under paragraph 1 above. The PSTIF may then notify the Attorney General's Office as to whether costs for cleanup of the release or alleged release are eligible for reimbursement or whether eligibility cannot be determined at that time. The Attorney General's Office may then use this information in determining when and if the PSTIF should be included in resolving the enforcement case, and will be responsible for communicating and coordinating with the PSTIF as needed.

Effective this 29 day of March, 2000.

PSTIF Board of Trustees	**Missouri Department of Natural Resources**
William H. Creech, III, Chairman	Stephen Mahfood, Director

CONFIDENTIALITY AGREEMENT

The Missouri Department of Natural Resources ("MDNR") and the Petroleum Storage Tank Insurance Fund Board of Trustees ("PSTIF Board") hereby agree, pursuant to § 610.032, RSMo, as follows:

1. The MDNR is an executive agency, as that term is defined at § 610.032.4, RSMo. The MDNR is required by statute, specifically §§ 319.100 to 319.127, RSMo, to regulate petroleum storage tanks, including the investigation and remediation of petroleum contamination caused by releases from such tanks.

2. The PSTIF is an executive agency, as that term is defined at § 610.032.4, RSMo. The PSTIF Board is required by statute, specifically, § 319.129 and § 319.131, RSMo, to administer the PSTIF, including providing insurance coverage to owners and operators of petroleum storage tanks that are currently in use and providing reimbursement to certain persons who pay to cleanup petroleum contamination from petroleum storage tanks that are no longer in use.

3. The MDNR and the PSTIF Board agree that the MDNR shall provide on a monthly basis to the PSTIF Board a list of all enforcement cases referred to the Attorney General's Office under § 319.127, RSMo. The parties agree that the PSTIF Board shall provide on a monthly basis a list of all sites or facilities at which it is involved in litigation or anticipated litigation. The parties acknowledge that these lists may be closed records under § 610.021, RSMo, but are being provided in accordance with the terms of their Memorandum of Understanding to allow both parties to fulfill their statutory duties. Such information may only be used by the parties in furtherance of their statutory duties.

4. The MDNR and PSTIF Board agree that the PSTIF Board may provide to the MDNR confidential information gathered, obtained or created during the course of defending third party claims pursuant to § 319.131.5, RSMo. When such information is provided, the MDNR agrees to keep such information confidential, although by this Agreement the MDNR is not prohibited from taking whatever action it deems appropriate to address a threat or imminent threat to human health or the environment. The parties acknowledge that the sharing of this information may be necessary to assist the MDNR in performing its legal responsibilities. Such information shall be used by the MDNR only in the furtherance of its legal responsibilities.

5. Information provided by the PSTIF Board to the MDNR shall be provided to the Director of MDNR's Hazardous Waste Program. Information provided by the MDNR to PSTIF Board shall be provided to the Executive Director of the PSTIF.

6. Access to the information described above shall be begin as of the effective date of the Memorandum of Understanding between the parties. Pursuant to § 610.032.3, RSMo, this Confidentiality Agreement shall be effective for one year, and shall be renewed annually.

IN WITNESS WHEREOF, the parties hereto execute this Confidentiality Agreement.

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: _____
Stephen Mahfood, Director

DATE: _____

PETROLEUM STORAGE TANK INSURANCE FUND BOARD OF TRUSTEES

BY: _____
Bart Creech, Chairman

DATE: 1-29-00