JOINT DNR/PSTIF PLAN FOR ADDRESSING MISSOURI'S LUST BACKLOG

The national trend of cleanups completed, as well as the pace of Leaking Underground Storage Tank (LUST) cleanups completed in Missouri, has slowed. The Environmental Protection Agency (EPA) has identified this as a concern.

Data for Missouri indicate that fewer cleanups are being completed annually than previously. There are various reasons for this trend. However, it is not the purpose of this plan to present an exhaustive analysis of the causes, but rather to outline actions the two agencies have agreed to take to increase the number of cleanups completed. The purpose of this plan is to ensure progress toward addressing Missouri's LUST backlog. Nothing in this plan is intended or shall be construed to limit the authority or discretion given by law to either the DNR or the PSTIF, under chapter 319, RSMo, or other statutes.

The Department (DNR) and the Petroleum Storage Tank Insurance Fund (PSTIF) have collaborated to produce this plan, as it is their mutual desire and intent to take specific actions to accelerate the pace of LUST cleanups in Missouri. This plan is hereby approved by the DNR and the PSTIF.

Signed:

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Executive Director, PSTIF

3-7-14

Date

Sara Parker Pauley

Director, Department of Natural Resources

3/11/14

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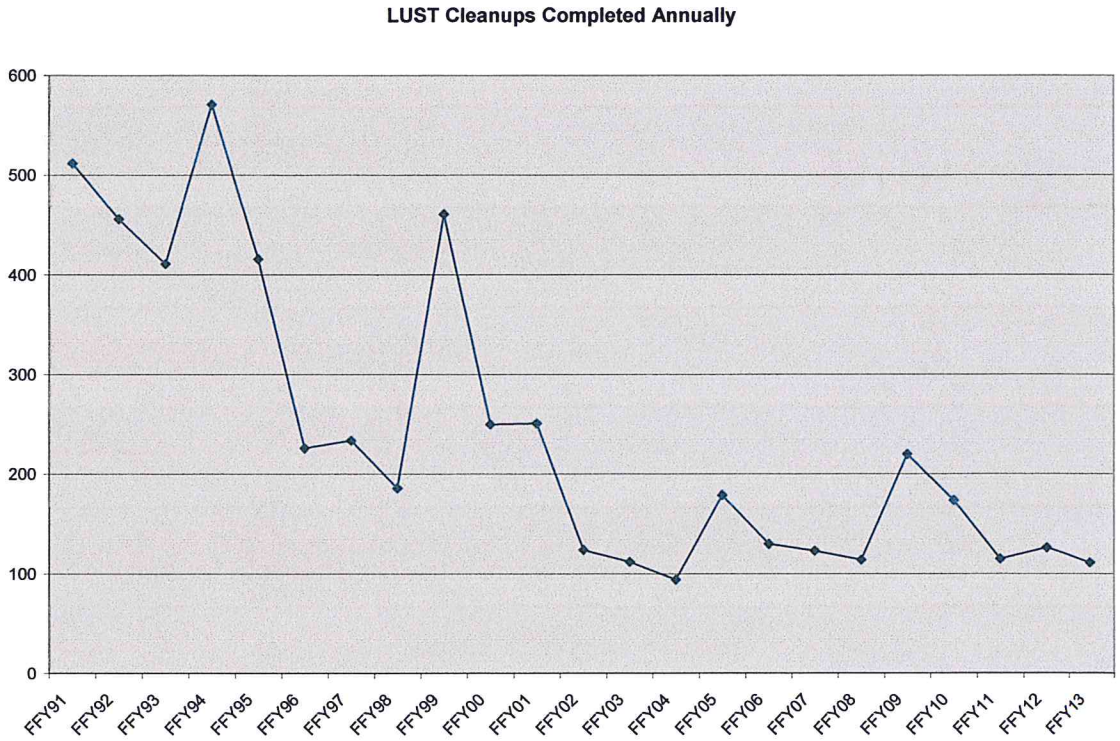
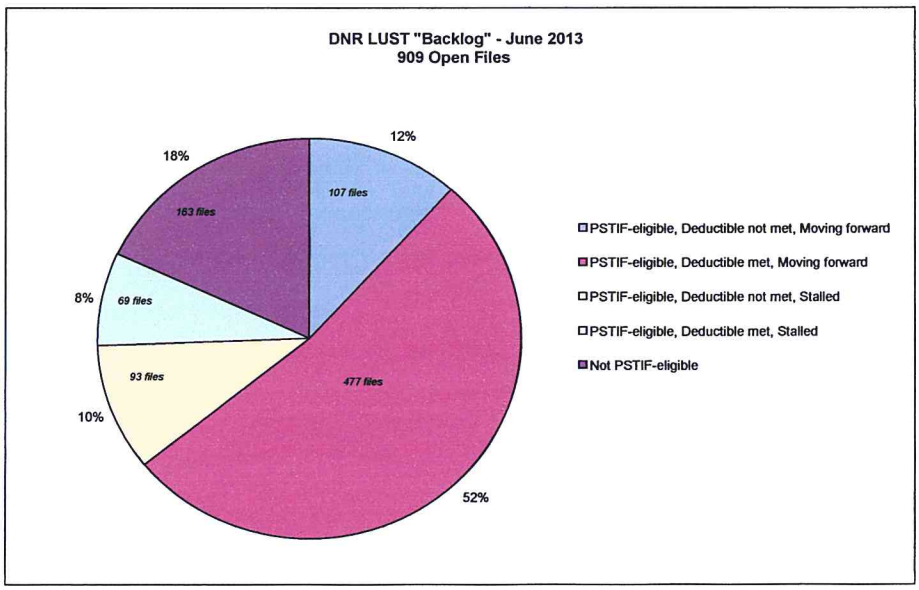
Analysis of Missouri's "Backlog"

Mirroring the national trend, LUST cleanups in Missouri have declined.



To better understand the universe of "backlogged cleanups," Missouri undertook an analysis of the DNR and PSTIF databases in June 2013. At that time, there were 909 active LUST files. Of those, 584 (64%) were PSTIF-eligible cleanups where characterization and/or corrective action was underway. However, 162 PSTIF-eligible cleanups were stalled. In addition, 163 of the 909 (18%) were not PSTIF-eligible.



STRATEGIES FOR BACKLOG REDUCTION

This joint plan identifies five strategies where additional focus will be placed to help expedite the pace of cleanups in Missouri and documents actions that the DNR and PSTIF have agreed to take to implement them. These strategies include the following:

A. Improving processes to address contamination at sites where progress is not being accomplished and a viable responsible party exists.

B. Providing training to consultants so they better understand what the DNR expects/requires in doing site characterization, risk assessment, or corrective action activities.

C: Enhancing communication to resolve issues at sites where the DNR/PSTIF/consultant disagree on what should be done or how it should be done.

D: Identifying cleanups where progress has not occurred because there was no viable responsible party (abandoned sites).

E. Reducing paperwork demands on consultants so that they can focus on data collection, risk assessment, and remediation activities.

ACTIONS TO IMPLEMENT STRATEGIES

A. Improving processes to address contamination at sites where progress is not being accomplished and a viable responsible party exists.

Actions:

1) ***Identify and focus on sites where a cleanup is unfinished and a viable party is responsible for completing it*** -- Further analysis of the June 2013 data identified that some of the 162 stalled PSTIF-eligible cleanups are "remedial claims" involving old, legacy pollution, where there may not be a legally-responsible party.

   Fifty-two (52) files were identified where it appears that a viable owner/operator was operating the underground storage tanks (USTs) when a release was confirmed. In most of these cases, PSTIF's $10,000 deductible has been met, yet the cleanup was not progressing. A list of these sites is enclosed as Appendix A.

   Because there is a viable responsible party for these releases, and because cleanup costs are being reimbursed by the PSTIF, there is a greater likelihood that these cleanups can be prompted to proceed expeditiously.

   Letters will be sent by the DNR to the property owners and/or responsible party for all 52 of these files in 2014. The PSTIF Claims Manager will make available any/all tank owner/operator information that PSTIF has to assure DNR has the most current information and will assist DNR as requested in its review of historical facts related to its determination of who is the party responsible for these releases. The DNR Tanks Section Chief and PSTIF Claims Manager will review the status of these files and responses to letters at least bimonthly and will either coordinate actions or will assign staff to do so, with the goal of prompting progress toward a "No Further Action" letter. A list of these files, with notations indicating what has been done and/or occurred, will be provided to both DNR and PSTIF management no later than July 1, 2014 and January 1, 2015, or sooner, if actions are taken on all 52 files before then.

2) ***Improve follow-up when the responsible party fails to act in a timely manner*** -- DNR has implemented a new system that allows project managers, their supervisors, and the Tanks Section Chief to more readily recognize when the party conducting a cleanup fails to respond to a DNR letter in a timely manner.

   When a DNR Project Manager sends a letter out containing a deadline for response, he/she records this action in the tracking system. The tracking system sets a due date depending on the required action. DNR staff will follow up as described below, unless circumstances warrant quicker actions.

If that date arrives and no mail has been received, the Tanks Section Project Manager sends a letter within 30 days, inquiring as to the status of the cleanup and giving the recipient 30-60 days to respond.

If a timely response is not received, the project manager sends a letter of warning within 30 days thereafter, giving the recipient 30 days to respond. If no response is received to this third communication, the project manager sends a notice of violation within 30 days, giving the recipient 15 days to respond. If a timely response still is not received, the file is referred to the Compliance and Enforcement Section (CES) to compel compliance.

To assure project managers meet these goals, the Remediation Unit Chief reviews a list of files monthly for which the party conducting the cleanup is tardy responding and the project manager has failed to send a follow-up letter. Failures to meet the performance expectations described above are discussed with the Project Manager that month.

For sites referred to the CES, the CES will coordinate with the Tanks Section's Project Managers to provide a path forward for getting the remediation project moving. Such efforts may include administrative orders on consent, unilateral orders or other enforcement actions that may be warranted to compel compliance. If the facility fails to satisfactorily respond or does not follow through, CES staff will refer the case to the Attorney General's Office to file suit to compel the cleanup.

It is anticipated that these efforts will increase the number of work plans and reports sent into the DNR for review. This will help get projects moving forward. However, this will increase the work load of document reviews for the Tanks Section. While the Tank Section will strive to meet review commitments, it needs to be recognized that adjustments in priorities or review times may be needed to keep reviews and follow-up activities moving forward.

3) ***Change PSTIF claims rule*** -- The PSTIF will propose changes to its claims rule, some of which are aimed at addressing this issue. The proposed rule changes will be circulated to interested parties in January/February 2014 and, assuming Board approval to do so, will be formally proposed for public comment in 2014.

   The DNR will review these changes and provide feedback. The Department's signature on this document does not endorse or indicate agreement with these proposed rule amendments, only that the DNR agrees to review these proposed rules and engage in dialogue with the PSTIF about them.

4) ***Tanks Section Structure Improvements*** - The Department recently reallocated an Environmental Engineer III position from the Hazardous Waste Program's Permits Section to the Tanks Section. This will allow the Section to mentor and train staff in reviewing engineered systems for free product recovery and other corrective action systems.

In order to provide more resources for staff to move sites along quicker, provide more efficiency in overseeing tank cleanups, provide more timely reviews, and lead to additional tank project closures each year, the Tanks Section recently divided the Risk Based Corrective Action (RBCA) Unit into two teams. These two teams will be the Risk Assessment Team and the Corrective Action Team. The team leader for the Risk Assessment Team will be the Environmental Specialist IV (technical expert) and the team leader for the Corrective Action Team will be the Section's new Environmental Engineer III. The team leaders are proposed to mentor staff, not supervise.

The Corrective Action Team will focus on sites that are more complex, such as sites with an engineered Corrective Action Plan (CAP), free product recovery systems, and geological features, etc. The Risk Assessment Team will handle files that are not in corrective action, but working on risk assessments, and will handle state lead sites (abandoned projects).

The team leaders will be responsible for working with their team staff, prepare for meetings with consultants and owners, discuss and make decisions on projects, and work on special projects, etc. By implementing this restructuring, it will provide the necessary time for the Unit Chief to focus on meetings, any requests or dealings with the PSTIF, management issues, personnel issues, letter reviews, ensuring consistency within the unit, and other duties as assigned.

B. Providing training to consultants so they better understand what the DNR expects/requires in doing site characterization, risk assessment, or corrective action activities.

Actions:

1) ***Clarify and streamline requirements*** -- The DNR has nearly completed a major effort to clarify and streamline its RBCA Guidance Documents and implement the new Guidance via a rulemaking. The Hazardous Waste Management Commission voted to approve the final Orders of Rulemaking to implement this new document at its meeting on October 18, 2013. The new rules will go into effect on February 28, 2014.

   Two webinars were held for consultants in Spring 2013 to explain these new rules and review the changes to the Guidance Document. It is anticipated that this will reduce the number of iterations required for work plans and reports, beginning in 2014

2) ***Clarify which documents related to site characterization, risk assessment and corrective action must contain a professional seal*** – In the past, progress was sometimes delayed because a particular plan or report was submitted by an environmental professional without appropriate credentials. The DNR has recently clarified this; see Appendix B. Both the DNR and the PSTIF have distributed this information to their respective email lists of consultants.

3) ***Provide training*** -- Most of the consultants who are doing tank site cleanups in Missouri do not attend the National Tanks Conference or other similar training and educational opportunities. To rectify this, the DNR and PSTIF will offer the following training opportunities for Missouri's tank site consultants:

   - February/March 2014: Free training via webinar on "How to Prepare a Risk Assessment Report;" to be prepared and presented by DNR's Laura Luther. The training will be developed in coordination with PSTIF's Dan Henry.
   - April 2014: Interstate Technology & Regulatory Council (ITRC's) Light Non-aqueous Phase Liquid (LNAPL) training will be held in Kansas City. Several members of the Tanks Section and PSTIF will attend this training. The DNR and PSTIF also will disseminate notice of this training opportunity to environmental consultants who are doing or have recently done tank site cleanups in Missouri.
   - May/June: Free webinar on BOS200, Regenisis, Eco-Vac services, or other remedial technology, with Missouri case study. (Ken Koon and Dave Walters will discuss and make this decision by end of February.)
   - September/October: Repeat: "How to Prepare a Risk Assessment" webinar
   - November/December: Free training via webinar on a site characterization or remediation technology. (To be decided by Ken Koon and Dave Walters by end of September.)

- The DNR will continue to provide training to tank site consultants as part of the Annual Missouri Waste Coalition Control Conference at the Lake of the Ozarks. This conference is held in June/July of each year.

4) Continue investing in staff training -- (Tentative) ITRC Groundwater Statistics and Monitoring Compliance Work Group is developing guidance and training. Once that is completed, the DNR and PSTIF plan to send staff to this training.

5) Alert consultants of and encourage their participation in other available training opportunities -- The DNR and/or PSTIF will disseminate other training opportunities and information to tank consultants. This will include webinars and classroom training opportunities received from vendors, universities, etc.

C. Enhancing communication to resolve issues in occasional situations where the DNR/PSTIF/consultant disagree on what should be done or how it should be done.

Action:

Implement a new procedure for resolving these issues in a timely way -- The DNR Tanks Section Chief and the PSTIF Claims Manager are both responsible for recognizing when a situation like this arises and bringing it to the others' attention.

These two managers will meet no less frequently than once a month to review/resolve these problems. Each has the authority to modify or overrule the decisions of their respective staff members, and have acknowledged that compromises that are not entirely satisfactory to either party may be required. When either DNR or PSTIF identifies a file like this, each will provide a written summary of their perspective and rationale to the other 7 days prior to the meeting.

If these two managers are unable to resolve the issue within 90 days, the issue will be elevated to the PSTIF Executive Director and DNR's DEQ Deputy Director, who will meet at least once every quarter to address these files. These managers have all acknowledged that compromises not entirely satisfactory to either party may be required and each has the authority to modify or overrule decisions of their respective staff members.

Should these two managers be unable to come to resolution, the aggrieved party may present his/her concern to the DNR Director for final decision on the environmental issues.

D. Identifying cleanups where progress has not occurred because there was no viable responsible party (abandoned sites).

Action:

Collaborate to review files to identify these releases -- The DNR recently has improved its recordkeeping and updated its database to address this issue. This will better enable the DNR and EPA to discern which files will likely "sit" until either (a) federal LUST Trust Fund money is available to address the confirmed release, (b) the municipality or county takes possession and does a cleanup, (c) an interested buyer "steps up" and voluntarily completes the cleanup in order to redevelop the property; or (d) additional information comes to light indicating a viable responsible party does, in fact, exist.

The DNR and the PSTIF are jointly working to review all release files where work is/was stalled, and are entering appropriate codes in their respective databases. To date, this review is approximately halfway done and has resulted in a list, as of January 2, 2014, of 117 releases from underground and aboveground storage tanks where currently available information indicates there is no viable responsible party to address cleanup obligations under chapter 319 RSMo. These files will not be a high priority for the DNR's project managers; less than one FTE will be allocated to work on these files. A list of these releases is contained in Appendix C; it is expected that approximately 50-100 more will be added to the list over the next six months, as staff reviews are completed.

If the situation changes, the DNR will, of course, remove that file from this list and respond appropriately. In addition, as Brownfield or federal LUST Trust Fund monies are made available, the DNR will engage contractors to work on these sites.

E. Reducing paperwork demands on consultants so that they can focus on data collection, risk assessment, and remediation activities.

Action:

> ***Utilize more "pay for performance" type agreements for corrective action*** – The PSTIF has occasionally negotiated a contract with an owner and his consultant that allows "lump sum" payments when specific cleanup milestones are achieved. During 2014, the PSTIF will identify additional candidates for this approach and will meet with claimants and their consultants, with the goal of implementing such agreements for 2-4 more releases during 2014.

Results and Conclusions

The DNR and the PSTIF have mutually agreed that in the first quarter of 2015, they will:

a) review the success of these efforts and consider whether to continue various procedures that have been put in place;
b) Meet with EPA to review the success of these efforts; and
c) Prepare a report summarizing this effort for the DNR Director and PSTIF Board of Trustees.